

Estrogen Receptor



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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

ACTION

NOTICES

Grants; availability, etc.:

VISTA projects—
Region 2, 40480

African Development Foundation

RULES

Privacy Act; implementation, 40411

Agricultural Marketing Service

RULES

Oranges and grapefruit grown in Texas, 40397

NOTICES

Meetings:

Plant Variety Protection Advisory Board, 40482

Agricultural Stabilization and Conservation Service

NOTICES

Feed grain donations:

Fort Berthold Reservation Indian Tribes, ND, 40482

Standing Rock Sioux Tribe, SD and ND, 40482

Agriculture Department

See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Federal Grain Inspection Service

Alcohol, Drug Abuse, and Mental Health Administration

NOTICES

Meetings; advisory committees:

November, 40494

Animal and Plant Health Inspection Service

RULES

Exportation and importation of animals and animal products:

Cattle pen size increase on ocean vessels, 40406

Interstate transportation of animals and animal products (quarantine):

Brucellosis—

Documenting animal identification on certificates, 40403

NOTICES

Genetically engineered organisms for release into environment; permit applications, 40482

Coast Guard

RULES

Ports and waterways safety:

Santa Catalina Island, CA; regulated navigation area, 40414

Commerce Department

See also Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration

NOTICES

Agency information collection activities under OMB review, 40483

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Mauritius, 40484

Consumer Product Safety Commission

NOTICES

Meetings; Sunshine Act, 40542

Defense Department

NOTICES

Agency information collection activities under OMB review, 40484, 40485

(2 documents)

Meetings:

DIA Advisory Board, 40485

Economic Regulatory Administration

NOTICES

Remedial orders:

Oasis Petroleum Corp., 40485

Employment and Training Administration

RULES

Unemployment compensation for ex-servicemembers, 40550

Energy Department

See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission

NOTICES

Grants and cooperative agreement awards:

Pacific Gas & Electric Co., 40485

Energy Information Administration

NOTICES

Agency information collection activities under OMB review, 40486

Environmental Protection Agency

RULES

Air quality implementation plans:

Nitrogen oxides; prevention of significant deterioration (PSD), 40656

Air quality implementation plans; approval and promulgation; various States:

Illinois, 40415

Water pollution; effluent guidelines for point source categories:

General pretreatment regulations; existing and new sources, 40562

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

Louisiana, 40460

Superfund program:

Worker protection standards, 40692

NOTICES

Committees; establishment, renewal, termination, etc.:

Municipal Settlement Discussion Group, 40490

Meetings:

Municipal Settlement Discussion Group, 40490

Superfund; response and remedial actions, proposed settlements, etc.:
Summit National Site, OH, 40490
Toxic and hazardous substances control:
Premanufacture notices; monthly status reports, 40618

Executive Office of the President

See Management and Budget Office; Presidential Documents

Export Administration Bureau

RULES

Libya; medicine and medical supplies shipments, 40410

Farmers Home Administration

RULES

Program regulations:

Business and industrial guaranteed loan program, 40399

PROPOSED RULES

Program regulations:

Rural housing—

Section 515 loan policies, procedures, and authorizations, 40430

Federal Aviation Administration

RULES

Control areas, 40408

Restricted areas, 40410

VOR Federal airways, 40408, 40409
(2 documents)

PROPOSED RULES

Airworthiness directives:

Pratt & Whitney, 40450

Jet routes, 40452

Prohibited areas, 40452

Rulemaking petitions; summary and disposition, 40449

Federal Emergency Management Agency

RULES

Flood insurance; communities eligible for sale:

Connecticut et al., 40426

Federal Energy Regulatory Commission

NOTICES

Electric rate, small power production, and interlocking directorate filings, etc.:

New England Power Co. et al., 40487

Applications, hearings, determinations, etc.:

Oklahoma Gas & Electric Co., 40489

Federal Grain Inspection Service

NOTICES

Aflatoxin analytical techniques; comparison study, 40483

Federal Home Loan Bank Board

PROPOSED RULES

Federal Savings and Loan insurance Corporation and

Federal savings and loan system:

Conservators and receivers; indemnification of directors, etc., of Federal home loan banks; and corporate governance; reorganization; board action, extension, 40449

Practice and procedure:

Adjudicatory and investigative and formal examination proceedings; revisions, 40432

Federal Maritime Commission

NOTICES

Agreements filed, etc., 40491

Federal Reserve System

NOTICES

Meetings; Sunshine Act, 40542

Applications, hearings, determinations, etc.:

CNB Bancorp, Inc., et al., 40491

First Morrill Co.; correction, 40492

Hubco, Inc., et al., 40492

Huntington Bancshares, Inc., 40492

Steinmetz, Thomas J., 40493

West-Central Bancorp, Inc., et al., 40493

Fish and Wildlife Service

PROPOSED RULES

Endangered and threatened species:

Marbled murrelet, 40479

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:

Kansas—

Mobay Corp., 40483

Texas—

McAllen Economic Development Corp., 40484

Health and Human Services Department

See Alcohol, Drug Abuse, and Mental Health

Administration; Health Care Financing Administration;

National Institutes of Health; Public Health Service

Health Care Financing Administration

NOTICES

Medicare:

Hospice care payment cap, 40494

Organization, functions, and authority delegations, 40495

Health Resources and Services Administration

See Public Health Service

Housing and Urban Development Department

PROPOSED RULES

Government National Mortgage Association:

Mortgage-backed securities program; eligible issuers, 40458

Mortgage and loan insurance programs, etc.:

Social security and employer identification numbers disclosure by applicants and participants, 40624

Interior Department

See Fish and Wildlife Service; Minerals Management

Service; National Park Service

International Trade Administration

NOTICES

Antidumping:

Welded carbon steel pipe and tube products from—
Turkey; correction, 40544

International Trade Commission

PROPOSED RULES

Practice and procedure:

Unfair practices in import trade; investigations, enforcement procedures, 40453

Interstate Commerce Commission

RULES

Accounts, uniform system:

Property motor carriers; accounting and reporting requirements, 40428

NOTICES

Railroad operation, acquisition, construction, etc.:
Southern Indiana & Ohio River Railway Co., 40497
Railroad services abandonment:
Burlington Northern Railroad Co., 40497
Norfolk & Western Railway Co., 40498

Justice Department

See also Juvenile Justice and Delinquency Prevention
Office; Prisons Bureau

NOTICES

Immigration Related Unfair Employment Practices, Special
Counsel:

Declaration of intending citizen filing requirement (Form
I-772); agreement with INS, 40498

Pollution control; consent judgments:

Fairchild Industries, Inc., et al., 40499

Vigo Blacktoppers, Inc., et al., 40500

Privacy Act; systems of records, 40500

Juvenile Justice and Delinquency Prevention Office**NOTICES**

Grants and cooperative agreements; availability, etc.:
Illegal drug use and AIDS among high risk youth;
prevention and intervention; correction, 40536

Labor Department

See Employment and Training Administration; Pension and
Welfare Benefits Administration

Management and Budget Office**NOTICES**

Balanced Budget and Emergency Deficit Control
Reaffirmation Act (Gramm-Rudman-Hollings
amendments):

Revised sequestration report to President and Congress,
40697

Minerals Management Service**NOTICES**

Meetings:

Outer Continental Shelf Advisory Board, 40497

National Archives and Records Administration**NOTICES**

Agency records schedules; availability, 40537

National Economic Commission**NOTICES**

Meetings; Sunshine Act, 40542

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:

Occupant crash protection—

Passenger cars; light trucks, vans, and multipurpose
passenger vehicles; side impact protection, 40462

Vehicle classification, 40463

National Institutes of Health**NOTICES**

Meetings:

National Cancer Institute, 40496

National Institute of Child Health and Human
Development, 40496

Research Resources National Advisory Council, 40496

National Park Service**NOTICES**

Oil and gas plans of operation; availability, etc.:
Big Cypress National Preserve, FL, 40497

Nuclear Regulatory Commission**PROPOSED RULES**

Rulemaking petitions:

Young, Charles, 40432

NOTICES

Environmental statements; availability, etc.:

Southern California Edison Co. et al., 40537

Applications, hearings, determinations, etc.:

GPU Nuclear Corp. et al., 40538

Pension and Welfare Benefits Administration**PROPOSED RULES**

Employee Retirement Income Security Act:

Administrative hearings procedures, 40677

Civil penalty assessment procedures, 40674

Personnel Management Office**PROPOSED RULES**

Employment:

Private sector temporaries; government use, 40546

NOTICES

Agency information collection activities under OMB review,
40540

Presidential Documents**PROCLAMATIONS**

Special observances:

White Cane Safety Day (Proc. 5881), 40395

ADMINISTRATIVE ORDERS

Balanced Budget and Emergency Deficit Control

Reaffirmation Act (Gramm-Rudman-Hollings

amendments); final sequestration order (Order of Oct.
15, 1988), 40696

Prisons Bureau**RULES**

Inmate control, custody, care, etc.:

Inmate discipline and special housing units; good conduct
time credit disallowance, 40686

Urine surveillance to detect and deter illegal drug use,
40687

NOTICES

Prisons institutions; list modification, 40689

Public Health Service

See also Alcohol, Drug Abuse, and Mental Health

Administration; National Institutes of Health

NOTICES

National toxicology program:

Toxicology and carcinogenesis studies—

Rotenone, 40496

State Department**NOTICES**

Meetings:

Oceans and International Environmental and Scientific
Affairs Advisory Committee, 40540

Tennessee Valley Authority**NOTICES**

Meetings; Sunshine Act, 40542

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Transportation Department

See also Coast Guard; Federal Aviation Administration;
National Highway Traffic Safety Administration

NOTICES

Aviation proceedings:

- Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 40540
- International cargo flexibility level adjustment, 40541
- Standard foreign fare level—
- Index adjustment factors, 40541

Treasury Department

NOTICES

Agency information collection activities under OMB review, 40541

Veterans Administration

PROPOSED RULES

Adjudication; pensions, compensation, dependency, etc.:

- Procedural due process rights and retroactive awards eligibility criteria—
- Correction, 40544

Separate Parts In This Issue

Part II

Office of Personnel Management, 40546

Part III

Department of Labor, Employment and Training Administration, 40550

Part IV

Environmental Protection Agency, 40562

Part V

Environmental Protection Agency, 40618

Part VI

Department of Housing and Urban Development, 40624

Part VII

Environmental Protection Agency, 40656

Part VIII

Department of Labor, Pension and Welfare Benefits Administration, 40674

Part IX

Department of Justice, Prisons Bureau, 40686

Part X

Environmental Protection Agency, 40692

Part XI

The President and Office of Management and Budget, 40696

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR	236.....	40624
Proclamations:	241.....	40624
5881.....	242.....	40624
Administrative Orders:	244.....	40624
Orders:	247.....	40624
October 15, 1988.....	250.....	40624
	251.....	40624
	255.....	40624
5 CFR	290.....	40624
Proposed Rules:	390.....	40458
300.....	501.....	40624
	510.....	40624
7 CFR	570.....	40624
906.....	590.....	40624
1980.....	750.....	40624
Proposed Rules:	813.....	40624
1930.....	880.....	40624
1944.....	881.....	40624
	882.....	40624
9 CFR	883.....	40624
78.....	884.....	40624
91.....	885.....	40624
	886.....	40624
10 CFR	900.....	40624
Proposed Rules:	904.....	40624
50.....	905.....	40624
	913.....	40624
12 CFR	960.....	40624
Proposed Rules:		
509.....	28 CFR	
512.....	541.....	40686
522.....	550.....	40687
541.....		
542.....	29 CFR	
543.....	Proposed Rules:	
544.....	2560.....	40674
545.....	2570.....	40677
547.....		
548.....	33 CFR	
549.....	165.....	40414
569a.....		
569b.....	38 CFR	
569c.....	Proposed Rules:	
	3.....	40544
14 CFR		
71 (3 documents).....	40 CFR	
	51.....	40656
73.....	52 (2 documents).....	40415,
		40656
Proposed Rules:	122.....	40562
Ch. I.....	403.....	40562
39.....		
73.....	Proposed Rules:	
75.....	52.....	40460
	311.....	40692
15 CFR		
785.....	44 CFR	
799.....	64.....	40426
19 CFR	49 CFR	
Proposed Rules:	1207.....	40428
211.....	1249.....	40428
20 CFR	Proposed Rules:	
614.....	571 (2 documents).....	40462,
		40463
22 CFR		
1507.....	50 CFR	
	Proposed Rules:	
24 CFR	17.....	40479
Proposed Rules:		
200.....		
201.....		
203.....		
205.....		
207.....		
213.....		
215.....		
221.....		
232.....		
234.....		
235.....		

Presidential Documents

Title 3—

Proclamation 5881 of October 12, 1988

The President

White Cane Safety Day, 1988

By the President of the United States of America

A Proclamation

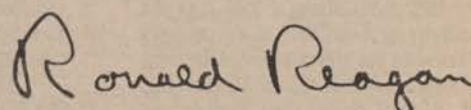
More and more visually impaired Americans are attaining independence in their daily lives, and we can all reflect gratefully on the role of the white cane in making this so. Thanks to the white cane and public awareness of it, blind people can travel and conduct daily activities successfully.

The white cane has affected the lives of its users so profoundly that it has come to symbolize freedom and self-reliance for blind citizens everywhere. This simple but effective tool helps many people with visual impairments build fuller lives. Each October, White Cane Safety Day offers all Americans the opportunity to congratulate their friends, neighbors, and fellow citizens who use the white cane to such good advantage for themselves and for our communities and country.

In acknowledgment of the white cane and all it symbolizes, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 15, 1988, as White Cane Safety Day. I urge all Americans to show respect for those who carry the white cane and to honor their many achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.



Presidential Documents

Transmittal Seal of October 12, 1963

White House, Washington, D.C. 20540

My dear Mr. President:

A very warm

greeting and welcome to the President and Mrs. Kennedy as they arrive in the White House. I am sure that they will find everything in the White House just as they left it. I am sure that they will find everything in the White House just as they left it.

The White House has been a very warm and friendly place for the President and Mrs. Kennedy. I am sure that they will find everything in the White House just as they left it. I am sure that they will find everything in the White House just as they left it.

In the White House, I am sure that they will find everything in the White House just as they left it. I am sure that they will find everything in the White House just as they left it.

Very truly yours,
John F. Kennedy

John F. Kennedy

Rules and Regulations

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-88-131]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Establishment of Identifying Marks and Terms and Conditions of Use in Connection With Promotion and Advertising Activities and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes handlers of Texas oranges and grapefruit to use two additional identifying marks, "Texas Choice" and "Texas Fancy," utilized by the Texas Valley Citrus Committee in promotional and advertising projects. Currently, the marks "Texasweet" and "Sweeter by Nature" are authorized for use in connection with such activities and will continue to be authorized. Use of identifying marks by handlers is voluntary. If these marks are used the fruit must meet certain minimum quality requirements. This action is designed to assist in the development and expansion of markets for Texas oranges and grapefruit. Conforming changes are also made in the container grade marking requirements in recognition of the establishment of these new identifying marks and conditions for use.

DATES: Effective Date: October 17, 1988. Comments which are received by November 16, 1988 will be considered prior to issuance of the final rule.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order and approximately 3,000 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

Currently, § 906.137 allows handlers to use the identifying marks "Texasweet" and "Sweeter By Nature" under certain conditions in connection with committee promotional and advertising projects undertaken to increase shipments of Texas oranges and grapefruit. Paragraph (a)(1) of § 906.137 allows handlers to affix these marks severally or jointly to containers

of grapefruit or to individual grapefruit comprising a lot only if the grapefruit grades at least U.S. No. 1. Paragraph (a)(2) of that section prescribes specifications for oranges. Handlers can only affix these marks on containers of oranges or to individual oranges if the oranges grade at least U.S. Combination, with not less than 60 percent, by count, of the oranges in each container grading at least U.S. No. 1 and the remainder, U.S. No. 2. Section 906.137 is established pursuant to § 906.37 of the order.

This action revises paragraph (a) of § 906.137 to establish a new identification mark (Texas Choice) for oranges and grapefruit and the mark (Texas Fancy) for grapefruit, to be used for handlers in connection with committee promotional and advertising projects. The use of these marks would be limited to high quality, attractive looking fruit. This is intended to enhance the image of Texas oranges and grapefruit, and to augment the committee's promotional and advertising efforts to expand sales of Texas citrus. This action is based on a unanimous recommendation of the Texas Valley Citrus Committee, which works with the Department in administering the marketing order.

The identifying mark "Texas Choice" being established for oranges could be affixed to containers of oranges or to individual oranges comprising a lot, if the oranges at least meet U.S. No. 2 requirements, and the oranges possess more yellow surface color than specified for U.S. No. 2 grade fruit. The yellow or orange color will have to predominate over the green color on at least 75 percent (instead of the currently prescribed two-thirds for U.S. No. 2) of the fruit surface in the aggregate which is not discolored. The use of "Texas Choice" for grapefruit would be limited to U.S. No. 2 or better fruit, but less color discoloration would be allowed than is allowed for U.S. No. 2. Under U.S. No. 2 specifications, not more than two-thirds of the surface of the grapefruit in the aggregate may be affected by discoloration. To use the identifying mark "Texas Choice", no more than 60 percent of the surface may be affected by discoloration.

"Texas Fancy" will be authorized for containers of grapefruit or individual grapefruit if the fruit meets U.S. No. 1 or better grade requirements, with less color discoloration than allowed for U.S.

No. 1. Only 40 percent of the surface will be able to be affected by discoloration instead of the current maximum of 50 percent for U.S. No. 1. The terms relating to the U.S. grades have the same meaning as those specified in the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) [7 CFR 51.620 through 51.685] and in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona) [7 CFR 51.680 through 51.712].

The industry is gradually recovering from the devastating freezes of the early 1980's. Total Texas orange production increased 61 percent from 38,000 tons (875,000 boxes) in 1986-87 to 61,000 tons (1,430,000 boxes) in 1987-88. Based on production trends since the 1983 freeze, it is expected that production for the 1988-89 season will show a relatively large increase over the previous season due to an increase in yields and bearing acreage. Shipments of fresh Texas oranges increased by 34 percent from 33,363 tons (785,000 boxes) in 1986-87 to 44,800 tons (1,054,000 boxes) in 1987-88. Total Texas grapefruit production increased by 97 percent from 77,000 tons (1,925,000 boxes) in 1986-87 to 152,000 tons (3,800,000 boxes) in 1987-88. The positive trend in production since the 1984-85 season is expected to continue into the 1988-89 season. Fresh shipments increased by 57 percent, from 62,000 tons in 1986-87 to 97,160 tons in 1987-88.

As supplies return to normal, strong efforts will be needed by the Texas Citrus industry to regain its markets. The use of these new identifying marks in conjunction with the committee's efforts to promote and expand markets is intended to improve the image of Texas oranges and grapefruit in the marketplace and help regain markets.

This action also makes a conforming change in paragraph (a)(3) of § 906.340 so that handlers do not have to affix container grade markings if the handlers properly utilize the identifying marks "Texas Choice" and "Texas Fancy" pursuant to § 906.137. The Committee indicated that the use of grade markings like "U.S. No. 2", together with the identifying marks "Texas Choice" or "Texas Fancy", would cause confusion in the marketplace. An obsolete proviso currently in paragraph (a)(3) also is deleted.

Therefore, the Department's view is that the impact of this action would be beneficial to producers and handlers because it would provide handlers additional marketing flexibility by allowing them to conduct their marketing operations more closely in line with the committee's promotion and

advertising activities. This should result in the more successful use of the committee's promotion funds and help handlers sell more fruit.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the interim final rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) Handlers of these fruits are aware of this action, which is based on a unanimous recommendation of the committee made at a public meeting, and they will need no additional time to comply with the requirements; (2) this use of these identifying marks is voluntary, not mandatory; (3) the shipment of the 1988-89 season Texas orange and grapefruit crops is expected to begin in late-September and handlers should be able to utilize the additional marketing tools provided by this action by that time; and (4) the rule provides a 30-day comment period and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas grapefruit, oranges.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Paragraph (a) of 906.137 is revised to read as follows:

§ 906.137 Handlers use of identifying marks utilized by the committee in promotional and advertising projects.

(a) Pursuant to § 906.37, the identifying marks "Texasweet", "Sweeter By Nature", "Texas Fancy", and "Texas Choice" shall be available

to handlers only under the following terms and conditions:

(1) The identifying marks "Texasweet" and "Sweeter by Nature" may severally or jointly be affixed only to containers of grapefruit or to individual grapefruit comprising a lot which grades at least U.S. No. 1.

(2) The identifying mark "Texas Fancy" may be affixed only to containers of grapefruit or to individual grapefruit comprising a lot which grades at least U.S. No. 1 with no more than 40 percent of the surface of the grapefruit, in the aggregate, affected by discoloration.

(3) The identifying mark "Texas Choice" may be affixed only to containers of grapefruit or to individual grapefruit comprising a lot which grades at least U.S. No. 2, with no more than 60 percent of the surface of the grapefruit, in the aggregate, affected by discoloration.

(4) The identifying marks "Texasweet" and "Sweeter by Nature" may severally or jointly be affixed only to containers of oranges or to individual oranges comprising a lot which grades at least U.S. No. 2, with not less than 60 percent, by count, of the oranges in each container thereof grading at least U.S. No. 1 and the remainder U.S. No. 2.

(5) The identifying mark "Texas Choice" may be affixed only to containers of oranges or to individual oranges comprising a lot which grades at least U.S. No. 2, except that in determining whether the fruit is reasonably well colored the yellow or orange color must predominate over the green color on at least 75 percent of the fruit surface in the aggregate which is not discolored.

3. Paragraph (a) introductory text and paragraph (a)(3) of § 906.340 are revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) No handler shall handle any variety of oranges or grapefruit grown in the production area unless such fruit is in one of the following containers, and the fruit is packed and the containers are marked as specified in this section:

(3) *Container grade markings.* Except when the identifying marks "Texas Choice" or "Texas Fancy" are used by handlers pursuant to § 906.137, any container of U.S. No. 2 grade fruit shall be marked to indicate the grade of the fruit in letters and numbers at least three-fourths inch in height: *Provided*, That bags containing five or eight

pounds of fruit shall be so marked with letters and numbers at least one-fourth inch in height prominently displayed on the front panel of the bag.

Dated: October 12, 1988.
Deputy Robert C. Keeney,
Director, Fruit and Vegetable Division.
[FR Doc. 88-23908 Filed 10-14-88; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Streamlining the Business and Industrial Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to streamline the Business and Industry (B&I) Guaranteed Loan program. This action is taken to reduce borrower participation costs, reduce Federal costs per job created or saved, to increase the number of jobs created and to better direct the program toward displaced farmers and small communities with higher rates of unemployment. The intended effect is to improve program operations and eliminate unnecessary burdens on borrowers.

EFFECTIVE DATE: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Bowles, Loan Specialist, Business and Industry Division, FmHA, USDA, Washington, DC. 20250; telephone (202) 475-3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." This action will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G,

"Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Final Rule

A proposed rule was published in the March 29, 1988, issue of the *Federal Register* (53 FR 10100). It proposed to streamline the FmHA Business and Industrial Guaranteed Loan (B&I) program and to direct program benefits to eligible rural areas of high unemployment, to displaced farm families, and to projects that make the most efficient use of the B&I program's financial support. This rule adopts as final that proposed rule, with certain technical changes adopted on the basis of public comment. Those changes deal with the following:

1. The definition of an area of high unemployment.
2. The incomes data to be used in measuring job cost for priority-setting.
3. The threshold amount of loan balance used to determine when a FmHA State Director may waive the requirement for an annual audited financial statement.

Comments on the proposed rule were invited from the public until April 28, 1988. Eight comments were received and have been carefully considered.

Two commenters noted that in the setting of priorities for loan-making the proposed rule inadvertently gave the higher priority to projects with the highest cost per job created or saved. The commenters are correct and in the final rule, in 7 CFR 1980.451(d)(3), the ordering of percentages for the award of priority points is reversed, correcting the error in the proposed rule.

Two commenters recommended that instead of nonmetropolitan median income FmHA use nonmetropolitan household income as a factor in determining relative costs per job in 7 CFR 1980.451(d)(3)(ii) because it is a figure that is generally more accessible. An FmHA review indicates that, in fact, the household income data are more

available and, therefore, this recommendation is accepted.

Two commenters suggested that the language of the proposed rule defining an "area of high unemployment" at 7 CFR 1980.402(a) should cite the unemployment rate rather than the level of unemployment and restrict to Federal source data those data that may be used. FmHA concurs. "Level" has acquired a meaning relating to the actual number of unemployed persons, not the percentage, and Federal data down to the county level is now available. Both commenters also recommended using data that is not seasonally adjusted because the seasonally adjusted data is sometimes not available. A review by FmHA has determined that this is correct and the change recommended by the commenters is adopted.

The above changes resulting from comments received are in clear conformity with the intent of FmHA and USDA in proposing, and now promulgating this rule, and conform with the descriptions in the preamble to the proposed rule.

One comment was received opposing granting State Directors authority to waive or modify otherwise applicable requirements that appraisals of collateral be performed by independent fee appraisers. The proposed rule, at 7 CFR 1980.444, allows State Directors authority to permit appraisals by a lender's own in house appraisers under limited circumstances. While the commenter correctly points out the advantages of utilizing independent fee appraisers, it is FmHA's conclusion that limited discretion, as provided in the proposed rule, is justified in the case of the relatively smaller loans that FmHA is seeking to encourage by reducing overhead costs in the handling of applications by lenders and borrowers. It should be pointed out that FmHA has had, and retains, the right to reject appraisals it determines to be inadequate.

In the proposed rule, at 7 CFR 1980.451(i)(13), FmHA proposed to permit waivers of requirements for audited financial statements, substituting compilations or reviews, on seasoned loans in the relatively smaller category. Seasoned loans are those which have been current for two years or more, have been paid down by a third or more, and comply with loan covenants. One commenter recommended that compilations or reviews be acceptable on all loans of \$750,000 or less, including new loans. FmHA recognizes that audits of financial statements can be a costly

item for a smaller business. However, and especially for new businesses, FmHA sees the audited statement as desirable, not only as a tool of credit analysis, but also as a valuable management tool. For that reason, FmHA concludes that the discretion to permit compilations and reviews in lieu of audited statements should remain limited to relatively small, seasoned loans. However, in light of data presented by another commenter relative to costs and benefits of audits, FmHA has reduced to \$100,000 the threshold loan balance. State Directors will have the authority to waive the audit requirement on loans with balances below that threshold.

One commenter stated that the reduced percentages of guarantee on loans over \$2 million (7 CFR 1980.420) would preclude his bank's participation. The case presented in the comment would not be affected by the changes proposed. It appears, based on inferences, that there is some confusion between the maximum percentages of guarantee that are permitted under the rule (90 percent on loans of \$2 million or less) and judgments by FmHA field personnel as to what percentage, within that limit, they will recommend to the FmHA decision-making officials. Such judgments are based on credit and loan analyses. The maximum percentage (90 percent in the cited example) is just that, a maximum. The percentage of guarantee, up to the maximum, is a matter of negotiation between the lender and FmHA.

Another commenter recommended that the maximum percentage of guarantee be 80 percent for all loans, regardless of size. The current maximum is 90 percent, and that maximum would be retained in 7 CFR 1980.420 for loans of \$2 million or less. The purpose of the proposed rule is to stress relatively smaller loans. That objective, FmHA concludes, is best attained by providing a higher level of assistance for the relatively smaller projects, compared to those involving loans over \$5 million, on which the maximum percentage of guarantee would be 70 percent.

One commenter recommended partial retention of the requirement for feasibility studies on loans under \$2 million. FmHA has clarified the language in 7 CFR 1980.442 to emphasize that it is formal feasibility study that would be the subject of a waiver. The lender would still have to demonstrate project feasibility, and could do so with data less formally presented, and less costly to produce than the formal studies produced by consultants.

This final rule makes the following changes in the B&I Guaranteed Loan

program. All section references are to Subpart E of Part 1980 of Title 7, Chapter XVIII of the Code of Federal Regulations, except as otherwise noted.

1. Section 1980.20 of Subpart A of Part 1980 is amended to show that the maximum percentage of guarantee, as opposed to the maximum loss payable by FmHA on a B&I Guaranteed Loan, is governed by § 1980.420 of Subpart E of Part 1980.

2. Section 1980.402 is amended to define an area of high unemployment for priority-setting in loan making.

3. A uniform cap of \$10 million is established in § 1980.413 for the amount of a new loan that may be guaranteed.

4. A new § 1980.420 is added, establishing limits on the percentage of a loan that may be guaranteed. Those maximum percentages are 90 percent for loans not over \$2 million, 80 percent for loans over \$2 million but not over \$5 million, and 70 percent for loans over \$5 million.

5. Guarantees of loans with variable interest rates tied to a base rate published periodically in a recognized national or regional financial publication will be allowed in cases in which the loan agreement provides for interest rate floors and ceilings. Previously § 1980.423 did not provide for guarantees when the loan agreement provided such floors and ceilings.

6. Section 1980.442 is revised to allow State Directors discretion in requiring formal feasibility studies on loans of \$2 million or less.

7. Section 1980.444 is revised to allow State Directors limited discretion to permit lenders' "in house" appraisals on loans of \$2 million or less.

8. A new priority system is established for the guaranteeing of new loans at § 1980.451(d)(3). The priority system emphasizes assistance to displaced farmers and small communities with high unemployment, projects which create and/or save jobs at the lowest cost per job, and projects where FmHA assistance is best leveraged.

9. Section 1980.451(f) is revised so that credit reports can be used to verify data submitted on Statements of Personal History, expediting the required clearance process.

10. State Directors are given discretion in § 1980.451(i) and § 1980.469 Administrative C to accept compilation financial statements or reviews in lieu of audited financial statements on seasoned loans with unpaid balances of \$100,000 or less.

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

For the reasons set forth in the preamble, USDA amends Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations, as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 CFR Part 1989; 42 U.S.C. 1490; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.20 is amended by revising the introductory text to read as follows:

§ 1980.20 Loan guarantee limits.

The maximum loss covered by the Loan Note Guarantee, Form FmHA 449-34, or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of: the percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or the percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be informed in writing on Form FmHA 449-14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of Subpart E of this part. FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

* * * * *

Subpart E—Business and Industrial Loan Program

3. Section 1980.402 is amended by removing all first level paragraph designations and by adding after the introductory text a new paragraph to read as follows:

§ 1980.402 Definitions.

Area of high unemployment. An area in which a B&I Loan Guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

4. Section 1980.413 is amended by removing paragraph (a)(4) and by amending paragraph (b) by removing the words "as set forth in" and replacing them with the word "under."

5. Section 1980.420 is added to read as follows:

§ 1980.420 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and FmHA.

(a) For loans of \$2 million or less, the maximum percentage of guarantee is 90 percent.

(b) For loans over \$2 million but not over \$5 million, the maximum percentage of guarantee is 80 percent.

(c) For loans in excess of \$5 million, the maximum percentage of guarantee is 70 percent.

(d) Lenders and borrowers will propose the percentage of guarantee. FmHA informs lenders and borrowers in writing on Form FmHA 449-14 of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Borrower's management.* The borrower's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services;

(2) *Collateral.* Collateral for the loan;

(3) *Financial condition.* Financial condition of borrower or borrower's principals, if appropriate;

(4) *Lender's exposure.* The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority; and

(5) *Trends and conditions.* Current trends and economic conditions.

6. Section 1980.423 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.423 Interest rates.

(a) * * *

(1) A variable interest rate must be a rate that is tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate, and changes can be made no more often than quarterly. The lender must incorporate within the variable rate promissory note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

7. The introductory text of § 1980.442 is revised to read as follows:

§ 1980.442 Feasibility studies.

Feasibility studies by recognized independent consultants are required. For loans of two million dollars or less, the State Director may waive this requirement at the request of the lender if the lender provides data that establish economic, market, technical, financial, and management feasibility to the satisfaction of FmHA. Market, financial, and management histories and analyses are of critical importance. The cost of feasibility studies shall be borne by the applicant and may be paid from funds included in the loan. The outline of the feasibility study or of data submitted in lieu thereof must be approved by FmHA. FmHA personnel may not recommend consultants, but may provide the borrower with a list of consultants who have performed satisfactorily on previous projects. An acceptable feasibility study should include, but not be limited to:

8. Section 1980.444 is amended by revising paragraph (a) to read as follows:

§ 1980.444 Appraisal of property serving as collateral.

(a) Appraisal reports prepared by independent qualified fee appraisers will be required on all property that will serve as collateral. In the case of loans two million dollars or less, the State Director may modify this requirement by permitting the appraisal to be made by a qualified appraiser on the lender's staff with experience appraising the type of collateral involved. The appraisers will give their opinion regarding the current market value of the collateral and the purpose for which the appraisal will be used. The lender will be responsible for

assuring that appropriate appraisals are made.

9. Section 1980.451 is amended by revising the introductory text of paragraph (d), paragraph (d)(3) and (f)(3), and the introductory text of paragraph (i)(13), and Administrative paragraph A.6.(c) to read as follows:

§ 1980.451 Filing and processing applications.

(d) *Loan Priorities.* Applications and preapplications received by FmHA will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (d)(3) of this section, FmHA will compare an application to other pending applications.

(3) Priorities will be assigned by FmHA to eligible applications on the basis of a point system that takes into account project location, the creation and saving of jobs, the cost at which those jobs would be created or saved, seasonal and part-time job impact, and leveraging of FmHA assistance. The application and supporting information submitted with it will be used to determine an eligible proposed project's priority for available funds or guarantee authority. The priorities described in this paragraph will be used by FmHA to score projects. A copy of the calculation of the score should be placed in the case file for future reference.

(i) *Location priorities.* The priority score for location will be the score for the highest-ranked category in which the project fits. If the location does not fit one of these categories, its receives no points for location. The categories, and their point scores, are:

(A) Located in a city or area under 25,000 population (10 points).

(B) Located in a city or area under 25,000 population that is in an area of high unemployment as of the date of application (20 points).

(C) Located in an area of high unemployment as of the date of application, provided the borrower certifies in writing to the State Director in simple narrative or letter form that the project will employ on a permanent, full-time basis (providing at its own cost such training or retraining as may be needed) persons (numbering no fewer than 25 percent of the project's employment) who are members of displaced farm families which recently derived from farming or ranching the majority of their combined incomes but are no longer actively engaged in

farming or ranching as operators or employees (35 points).

(ii) *Jobs priorities.* The priority score for jobs created and/or saved is the score for the highest-ranked category in which the project fits. If the project does not fit one of these categories, it receives no points for jobs. The categories, and their point scores, are:

(A) Project will contribute to the overall economic stability of the project area and generate permanent jobs beyond the entrepreneur and the entrepreneur's household (10 points).

(B) Project will contribute to the overall economic stability of the project area and will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy (20 points).

(C) Project will contribute to the overall economic stability of the project area, will employ on a permanent, full-time basis a number of persons that is significant in the context of the area's economy, and will retain in that area a significant number of jobs that would otherwise be lost (35 points)

(iii) *Job cost priorities.* The priority score for the project's cost per job is the score for the highest-ranked category in which the project fits. First, divide the amount of the FmHA guaranteed loan by the number of jobs created or saved. This will result in the cost per job. Count only full-time jobs. Part-time jobs may be reduced to a fraction of a full-time job and counted. For example, a 20-hour-per-week job, or a job that is full-time for six months per year, is one-half of a job. Second, determine the State's nonmetropolitan household income as described in § 1980.451(d)(3)(vi). Third, divide the cost per job by the State's nonmetropolitan household income. For example, if the cost per job is \$10,000 and the State's nonmetropolitan household income is \$20,000, the result will be 0.5. The categories, and their point scores are:

(A) Loans on which the result is greater than 1.5 but less than 2.0 (5 points).

(B) Loans on which the result is from 1.0 to 1.5 (15 points).

(C) Loans on which the result is less than 1.0 (25 points).

If the result exceeds 2.0, a high cost per job in that State, no points are received for job cost.

(iv) *Additional Points.* There shall be added to the score the points indicated for any and all of the following criteria met by the project.

(A) FmHA guaranteed loan is less than 50 percent of project cost (5 points).

(B) Percentage of guarantee is 10 or more percentage points less than the

maximum allowable for a loan of its size (5 points).

(C) Project will, in addition to any permanent full-time jobs, create a significant number of part-time or seasonal jobs that will provide additional income to underemployed residents of the project area without their having to give up any present part-time or seasonal jobs (10 points).

(v) *Administrative Points.* The State Director may assign up to 20 points to an application in addition to those points scored under § 1980.451(d)(3) (i) through (iv). These administrative points are intended to be assigned by a State Director only in cases of unforeseen exigencies, emergencies, benefits to other FmHA-assisted projects (including the limiting of financial risks affecting FmHA loans and loan guarantees) or the loss of financing if FmHA funds are not committed in a timely fashion. They may also be assigned in cases in which the project's goods or services are essential to other Federally assisted projects and activities in the area or to the successful implementation of an economic development strategy for the area that is sponsored and/or operated by an agency of the Federal or State government. An explanation for the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to 20 points. An assignment of points by the Administrator will be by memorandum, stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file. In assigning priorities to applications and in selecting projects for funding, FmHA will consider State development strategies. Funds (guarantee authority) allocated for use as prescribed in this regulation are to be considered for use by Indian tribes within the State regardless of whether State development plans include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in any benefits of these programs.

(vi) *Indexation.* When current, annual data are not available to determine a State's nonmetropolitan household income for purposes of the calculations described in paragraph (d)(3)(iii) of this section, indexation of census data is necessary. The State Director will use the figure from the most recent decennial census of the United States, increased by a factor representing the increase since the year of that census in

the Consumer Price Index ("CIP-U"). That factor shall be furnished annually by the National Office, FmHA.

(f) * * *

(3) Form FmHA 449-4, "Statement of Personal History," for a proprietor (owner), each partner, officer, director, key employee and stockholders holding 20 percent or more interest in the borrower except for those corporations listed on a major stock exchange and for those so listed if required by FmHA. Forms FmHA 449-4 are not required to be submitted for elected officials and appointed officials in connection with loan applications from public bodies. Failure to report full, complete and accurate information on the Statement of Personal History may result in FmHA's not making or guaranteeing the loan. Whenever possible, a local, regional, or national credit report, furnished by the lender, will be used to verify data on Form FmHA 449-4.

(i) * * *

(13) Proposed loan agreement. (See paragraph VII of Form FmHA 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 449-14, including the requirements for periodic financial statements and recordkeeping. There must be a requirement for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. In the case of seasoned loans with unpaid balances of \$100,000 or less, the State Director may modify this audit requirement by permitting the use of compilation financial statements or reviews to satisfy the audit requirement if prior audits were satisfactory. The loan agreement must also include, but is not limited to, the following:

A. Administrative * * *

6. * * *

(c) A local, national or regional credit report and Form FmHA 449-4 for all loans over one million dollars or for loans, regardless of size, when the State Director believes a character evaluation check is advisable.

10. Section 1980.469 is amended by revising paragraph "Administrative" C(1) to read as follows:

§ 1980.469 Loan servicing.

Administrative

C. * * *

1. The lender understands upon initial contact during loan application and in particular at loan closing that the lender is responsible for loan servicing and that annual audited financial statements are required, but that in the case of seasoned loans with unpaid balances of \$100,000 or less, compilation financial statements or reviews may satisfy the audit requirement.

§ 1980.481 [Amended]

11. Section 1980.481(a) of Subpart E of Part 1980 is amended by removing the reference, § 1980.402(b), and replacing it with a reference, § 1980.402.

Appendix C—[Amended]

12. Appendix C of Subpart E of Part 1980 is amended by removing paragraph (4) and redesignating paragraphs (5) through (14) as (4) through (13).

Dated: September 7, 1988.

Roland R. Vautour,
Under Secretary for Small Community and Rural Development.

[FR Doc. 88-23789 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-024]

Brucellosis; Documentation of Animal Identification on Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations to give those who complete certificates an alternative to transcribing individual animal identification or ownership brands directly onto certificates. Under this rule, those who complete certificates may staple to certificates a document already listing this information. This rule will reduce the paperwork burden for those who complete certificates

while continuing to ensure adequate identification of animals moved with a certificate.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Richard D. Hobbs, Senior Staff Veterinarian, Regulatory Communications and Compliance Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

As part of a program to prevent the interstate spread of brucellosis, the regulations in 9 CFR Part 78 (referred to below as the regulations) require a certificate for certain interstate movements of cattle and bison. Section 78.1 of the regulations requires that certificates show identification for each animal to be moved with the certificate. In most cases, individual animal identification is required; in some cases, ownership brands, which identify animals to a particular herd, are allowed.

On December 22, 1986, we published in the Federal Register (51 FR 45776-45777, Docket No. 86-095) a proposal to provide an alternative to writing individual identification or ownership brands directly onto certificates. We proposed that, under certain conditions, this information could be provided by attaching to a certificate another document already listing this information, such as a brucellosis test record (VS Form 4-33), or, for cattle allowed to be identified by ownership brands, an official brand inspection certificate.

The proposed rule reflected our belief that we could facilitate the interstate movement of certain cattle and bison by reducing the paperwork burden on those who prepare certificates while continuing to ensure adequate identification of the animals being moved.

We invite written comments on our proposed rule, stipulating that they had to be postmarked or received on or before February 20, 1987. We received 20 comments, 14 in support of the proposal and 6 against. The comments were from state and federal veterinary officials, an accredited veterinarian, and the American Veterinary Medical Association. All the comments were carefully considered and all objections and suggestions are discussed in this supplementary information section.

With the exception of changes discussed below and nonsubstantive, editorial changes to the proposed definition of "Certificate," we are

adopting the provisions of the proposed rule for the reasons given in the proposal and in this document.

Comments

Our proposal required that documents attached to a certificate identify each animal to be moved with the certificate, but no other animals.

Two commenters asserted that we should not require documents attached to a certificate to identify only those animals to be moved with the certificate. Rather, they said, we should allow the certificate to state that X number of animals listed on the attached form were purchased by the consignee.

Animals may be moved interstate with a certificate only if they meet certain conditions. Certificates, or documents attached to them, must identify each animal to be moved with the certificate. In most cases, individual animal identification is required; under certain conditions, ownership brands, which identify animals to a particular herd, may be used as identification. This requirement provides the necessary means of verifying that the animals moved are, in fact, the same animals that were released for movement with the certificate. In addition, we depend on this same identification process to provide a record of the movement of these animals. If brucellosis is detected at any place where an animal has been, this record allows us to locate potential sources of infection and take action to prevent the spread of the disease. Therefore, we have not adopted the commenters' suggestion.

Six commenters maintained that there would be few instances where all animals listed on a document, such as a test chart, would be moved interstate with the same certificate. For this reason, one of these commenters concluded that we should not adopt the proposed rule; the other four suggested that we allow use of documents that identify animals in addition to those covered by a certificate if information pertaining to the extra animals is crossed out.

We recognize that, in many cases, documents used to provide individual animal identification would contain information pertaining to animals in addition to those to be moved interstate with a particular certificate. However, not adopting the proposed rule would disallow use of all documents, even if they identified only those animals to be moved interstate with a certificate. Since use of another document to provide animal identification is meant to be an option, not a requirement, it is not

necessary for our rule to accommodate all types of documents. On the other hand, crossing out information pertaining to additional animals would, in effect, produce a document identifying each animal to be moved with the certificate, but no other animals. The final rule, therefore, allows use of documents that contain individual identification for animals other than those moved with a certificate if this information has been crossed out in ink on each copy.

One commenter who favored crossing out information pertaining to additional animals on attached documents also suggested that any cross-outs be initiated by the person (Veterinary Services representative, state representative, or accredited veterinarian) who issues the certificate.

It does not appear that requiring the person who issues a certificate to initial cross-outs on attached documents would improve compliance with the regulations. Therefore, we have made no change in response to this comment.

One commenter stated that any unused space for identifying individual animals on attached documents should be marked through in ink. He reasoned that marking through this space would make it difficult for anyone to add identification for animals not meant to be moved with the certificate.

We agree, and the final rule requires that any unused space for identifying individual animals on attached documents must be marked through in ink so that no additional information may be added.

Two commenters opposed use of ownership brands to identify animals on certificates. One of these commenters maintained that if we did allow ownership brands to be used as identification on certificates, then we should require the official brand inspection certificate to show the individual brand on each animal to be moved with the certificate but no other brands.

Our proposed rule did not introduce the option of using ownership brands as identification on certificates. Use of ownership brands to identify cattle moved with certificates has been allowed, under certain conditions, since October 14, 1986. In accordance with the definition of "Certificate" in § 78.1 of the regulations, ownership brands may be used to provide identification for cattle moved interstate with a certificate when the regulations do not require the cattle to have an official test before the interstate movement. In addition, the ownership brands must be registered with an official brand recording agency, and the cattle must be accompanied by

official brand inspection certificates. Allowing use of ownership brands under these circumstances facilitates identification procedures for cattle originating in Class Free states or areas, or in certified brucellosis-free herds. Because these cattle present a very low risk of transmitting brucellosis, use of ownership brands to identify them on certificates does not impede the brucellosis eradication program.

Our rule only states that, when ownership brands are allowed as identification on certificates, individuals preparing certificates may provide this information by stapling official brand inspection certificates to the certificates, rather than by transcribing the ownership brands directly onto the certificate.

We agree, however, that when official brand inspection certificates are used to provide identification for cattle moved interstate with a certificate, the official brand inspection certificate should show only the brands on those cattle to be moved with the certificate. Official brand inspection certificates may show multiple ownership brands, and some of these could be for cattle other than those moved with a particular certificate. As noted earlier in the discussion of individual identification, we use the identification shown on certificates to verify that animals moved with a certificate are the animals that were released for that movement, and to provide a record of the movement of these animals. Allowing a certificate or an attached document to show identification for animals other than those authorized to be moved with the certificate would complicate these tasks. Therefore, our final rule requires that each copy of the official brand inspection certificate show the ownership brand of each animal to be moved with the certificate, but any other ownership brands must be crossed out in ink. Also, to prevent additional ownership brands from being recorded on the official brand inspection certificate, the final rule requires that any unused space for recording ownership brands must be crossed out in ink on each copy of the official brand inspection certificate.

We proposed to require that documents attached to a certificate be imprinted with a serial number. We also proposed to require that the name of the document and the serial number be written in ink in the identification column on each copy of the certificate and that this information be circled or boxed, also in ink, so that no numbers could be added. Our intent was to make it difficult for anyone to substitute documents on a certificate or to attach

additional documents to a certificate. Several commenters pointed out that some commonly used test records are not serially numbered. They suggested that we allow the use of documents that are not serially numbered but that are identifiable and retrievable by some other means.

We agree that requiring a serial number would preclude use of many state and federal forms that otherwise could be used to provide individual identification for animals moved interstate with a certificate. We also have concluded that other information would adequately identify attached documents, including official brand inspection certificates, and allow timely location of a copy should that become necessary. The final rule, therefore, does not require imprinted serial numbers on either state or federal forms used to provide individual animal identification or official brand inspection certificates used to identify animals. Instead, the final rule requires that the following information be written on the original and each copy of a certificate when an attached document provides animal identification: (1) The name of the attached document; and (2) either the serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed. This information must be written in ink in the identification column on each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added.

Because the final rule does not require attached documents, including official brand inspection certificates, to be serially numbered, we are not adopting the proposed definition of "Official brand inspection certificate." The current definition will stand.

We proposed to require that a copy of any document used to provide identification for animals moved with a certificate be "attached" to each copy of the certificate. One commenter suggested that copies of documents should be stapled to each copy of a certificate to help prevent the papers from becoming separated.

We agree, and the final rule requires stapling.

Three commenters said we should not allow use of attached documents because the documents will become detached and lost.

As explained above, we have modified the proposed rule to require documents to be attached by stapling. We believe this will be sufficient, in most cases, to ensure that certificates

and attached documents stay together. Although it is possible that some documents may, despite the staple, become separated from a certificate, it is unlikely that this will occur on every copy of the certificate. (In accordance with § 78.2 of the regulations, one copy of the certificate must accompany the animals to destination, and one copy must be forwarded to the state animal health official of the state of destination, or to the state animal health official of the state of origin for forwarding to the state of destination. Also, in most states, the state animal health official of the state of origin retains a copy of the certificate. Our rule stipulates that, when animal identification is provided by a document attached to a certificate, a copy of that document must be attached to each copy of the certificate.) Furthermore, the final rule requires the original and all copies of the certificate to show the name of the attached document and either the serial number of the document or both the name of the preparer and the date the document was signed. This information will allow us to locate additional copies of the document should that become necessary.

One commenter asserted that we should not allow attached documents to provide identification of animals because copies often are not of sufficient quality to be readable. Another commenter, who supported the proposed rule, asked whether carbon copies or photocopies could be used.

As noted above, our rule requires that, when animal identification is provided by a document attached to a certificate, a copy of that document must be attached to each copy of the certificate. We realize that copies may sometimes be too light to be readable and that these copies would be of no use to us. Therefore, the final rule specifies that copies must be legible. Any type of copy, including carbon copies or photocopies, may be used as long as the copy is legible.

One commenter contended that we should not adopt the proposed rule because a copier would probably not be available in many stockyards. Another said we should not adopt the proposed rule because he did not think the rule would save time for most individuals who prepare certificates.

Copiers may not be available in some stockyards, and use of an attached document may not always save time for individuals who prepared certificates. In these cases, it may be necessary or preferable to list the identification of animals directly on the certificates. This remains an option. Using an attached document to provide identification of animals to be moved with a certificate is

allowed, not required, in instances when doing so will be helpful. Therefore, we have made no changes in response to the comments.

One commenter asserted that we should not adopt the proposed rule because the additional papers would make it more difficult to check certificates to determine whether violations have occurred. The commenter argued that we should require "one piece of paper" for moving livestock interstate.

If attached documents clearly identify only those animals moved with a certificate, either because those are the only animals listed on the document or because information pertaining to additional animals has been crossed out, use of attached documents should not present an enforcement problem. At the same time, allowing use of these documents will, in some instances, reduce the workload for individuals who prepare certificates. Therefore, we have made no change in response to these comments.

One commenter maintained that we should not adopt the proposed rule because use of attached documents would "add to the confusion" about how certificates must be filled out and "[allow] greater deviations from the present prescribed standards for the completion of health certificates."

We believe our requirements concerning attached documents are simple and straightforward enough that this rule will not create confusion about how certificates must be filled out. Furthermore, we believe that this rule may reduce the number of "deviations" referred to by the commenter because there will be less temptation to take short-cuts in filling out animal identifications on certificates. There also may be fewer transcribing errors.

One commenter indicated that he thought the proposed rule applied to origin health certificates (VS Form 17-140), which are used in connection with animals intended for exportation from the United States. Both the proposed rule and this final rule apply on to certificates issued for interstate movements of animals. To clarify this, we have revised the definition of "Certificate" to indicate that it is an official document issued at the point of origin of an "interstate" movement of animals.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we

determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not change the types of information required for certificates, does not increase the risk of brucellosis spreading interstate, and does not affect procedures for enforcing the interstate movement requirements in Part 78. Rather, it alleviates some of the paperwork burden on those who issue certificates for the interstate movement of cattle and bison and may, as a result, facilitate the movement of cattle and bison by decreasing the waiting time for certificates.

Under these circumstances, the Administrator, Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0570-0064.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of "certificate" is revised to read as follows:

§ 78.1 Definitions.

Certificate. An official document issued by a Veterinary Services representative, state representative, or accredited veterinarian at the point of origin of an interstate movement of animals.

(a) The certificate must show the official eartag number, individual animal register breed association registration tattoo, individual animal registered breed association registration brand, individual animal registered breed association registration number, or similar individual identification of each animal to be moved; the number of animals covered by the certificate; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. Ownership brands may be used in place of individual animal identification on certificates for cattle moved interstate when no official test for brucellosis is required under this part, provided the ownership brands are registered with the official brand recording agency. Except as provided in paragraphs (b) and (c) of this definition, all of the information required by this paragraph must be typed or written on the certificate.

(b) As an alternative to typing or writing individual animal identification on a certificate, another document may be used to provide this information, but only under the following conditions:

(1) The document must be a state form or Veterinary Services form that requires individual identification of animals;

(2) A legible copy of the document must be stapled to the original and each copy of the certificate;

(3) Each copy of the document must identify each animal to be moved with the certificate, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be written in ink in the identification column on the original and each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and

(ii) Either the serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who prepared the document and the date the document was signed.

(c) As an alternative to typing or writing ownership brands on a certificate, an official brand inspection certificate may be used to provide this

information, but only under the following conditions:

(1) A legible copy of the official brand inspection certificate must be stapled to the original and each copy of the certificate;

(2) Each copy of the official brand inspection certificate must show the ownership brand of each animal to be moved with the certificate, but any other ownership brands, and any unused space for recording ownership brands, must be crossed out in ink;

(3) The following information must be written in ink in the identification column on the original and each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the attached document; and

(ii) Either the serial number on the official brand inspection certificate or, if the official brand inspection certificate is not imprinted with a serial number, both the name of the person who prepared the official brand inspection certificate and the date it was signed.

Done in Washington, DC, this 11th day of October, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-23918 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 91

[Docket No. 87-113]

Exportation of Cattle; Increasing Pen Size on Ocean Vessels

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are increasing the maximum size of pens in which cattle may be shipped in ocean vessels. Cattle weighing less than 1,100 pounds may now be shipped in pens up to 226 square feet. Cattle weighing 1,100 pounds or more may be shipped in pens up to 610 square feet. Previously, pens for cattle of any size could be no larger than 120 square feet. Most ocean vessels equipped to transport cattle are fitted with pens that are between 120 and 226 square feet; ocean vessels used to transport cattle weighing 1,100 pounds or more have been fitted with pens measuring just over 600 square feet. We have no evidence that the larger pens cause illness or injury to cattle shipped in them. This rule removes unnecessary restrictions while maintaining high

standards for the humane treatment of cattle shipped by ocean vessel.

EFFECTIVE DATE: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Bowen, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91 (referred to below as the regulations) concern inspection and handling of livestock exported from the United States. Section 91.25 contains space requirements for animals on ocean vessels.

On June 9, 1987, we published in the *Federal Register* (52 FR 21688-21689, Docket Number 86-067), a document proposing to amend § 91.25(f)(1) by increasing, from 120 square feet to 226 square feet, the maximum allowable size of cattle pens on ocean vessels. Our proposal invited the submission of written comments postmarked on or before August 10, 1987.

We received 13 comments by this deadline. Nine supported the proposed rule as published. Three supported the proposed rule but favored an even greater maximum pen size of 400 or more square feet. One requested that we increase pen size to at least 600 square feet for cattle weighing 1,100 pounds or more.

Insufficient information is available concerning the effect of pens larger than 226 square feet on cattle weighing less than 1,100 pounds. Therefore, this final rule allows pens of no more than 226 square feet, as proposed, for cattle weighing less than 1,100 pounds. However, the following information concerning larger pens for heavier cattle has been supplied by a commenter and verified by the Office of Transportation, U.S. Department of Agriculture.

Since 1977, approximately 9,000 cattle, weighing from 1,100 to 1,800 pounds each, have been exported from the United States on two ocean vessels fitted with pens of approximately 603 square feet. These shipments were authorized by the U.S. Department of Agriculture as part of a continuing program of research to develop humane and efficient methods and equipment for shipping cattle by sea. The shipments were monitored by the Office of Transportation, U.S. Department of Agriculture, and personnel from the Department accompanied the cattle on some voyages. In addition, a television

camera was used to record the activities of selected cattle during one voyage. Neither the video tape nor first-hand observations revealed any problems attributable to pen size. In fact, the larger pens gave the cattle more room to lie down away from the feeding areas. Trip reports indicate no loss of cattle on most voyages and an overall mortality rate of less than one-half of 1 percent. This mortality rate is no greater than the average mortality rate among cattle shipped in pens 226 square feet or smaller. More than half of the losses occurred on one voyage when the ship sailed through a typhoon.

This information indicates that cattle weighing 1,100 pounds or more can be shipped safely and humanely in pens as large as those used in the research project. Rounding off 603 square feet to 610 square feet to allow for slight variations in pen sizes, we are, therefore, increasing the maximum allowable size of pens for cattle weighing 1,100 pounds or more to 610 square feet. The maximum allowable size of pens for cattle weighing less than 1,100 pounds is increased to 226 square feet, as proposed.

In addition, we are removing a requirement that space in pens on ocean vessels for cattle weighing 1,000 pounds or more shall be no more than 9 feet in width. On ocean vessels with cattle pens of 226 square feet, the width of the pens ranges from 14 to 20 feet; on ocean vessels with pens as large as 603 square feet, the pens are approximately 23 by 26 square feet. As stated earlier, cattle shipped in these pens have not sustained any injury or illness attributable to pen size.

Effective Date

The Administrator, Animal and Plant Health Inspection Service, has determined that this rule should be made effective upon publication in the *Federal Register*. This is necessary to relieve unnecessary restrictions, as soon as possible, affecting the exportation of cattle from the United States. Most ocean vessels equipped as livestock carriers and available to call at U.S. ports have pens between 120 and 226 square feet. These ocean vessels also transport cattle for other major cattle-exporting countries, most of which, including Australia, Canada, Great Britain, and New Zealand, allow pens up to 225 or 226 square feet. We have found no evidence that pens as large as 226 square feet are detrimental to the well-being to cattle shipped by ocean vessel. Continuing to limit the size of cattle pens on ocean vessels to 120 square feet would keep cattle exporters in the United States at a competitive

disadvantage. In addition, cattle weighing 1,100 pounds or more have been safely transported as part of an experimental program in pens of over 600 square feet, and the carrier involved has asked to be allowed to continue these shipments without special waiver. There appears to be no reason to delay granting this request.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not expect this rule to cause any significant increase in the number or percentage of cattle exported from the United States by sea. In 1987, 130,698 cattle were exported from the United States. Most (61 percent) went to Canada or Mexico and were, therefore, shipped by land. Approximately 22 percent were shipped by air, and approximately 17 percent were shipped by sea.

Based on current export orders, we estimate that about the same number of cattle will have been exported from the United States by the end of 1988. As in the past, most cattle exported from the United States will be shipped by land to Canada or Mexico. Our rule will not affect these shipments. We also expect the distribution of cattle exports between air and sea carriers to remain stable because the two types of carriers are not usually in direct competition with each other for these shipments. Air transportation is used for relatively small loads of cattle. A Boeing 747, for example, can carry a maximum of 200,000 lbs., or 400 lightweight (500-lb.) cattle. By contrast, ocean vessels are used for larger loads, typically between 500 and 1,000 head of cattle weighing up to 1,000 lbs. each. Also, whereas most air shipments can reach destinations anywhere in the world within 24 hours, sea voyages may take several weeks.

Furthermore, because our rule increases the maximum size of cattle pens, no changes to existing vessels are required. Pens smaller than 226 square

feet may continue to be used for cattle of any size.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for Part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.25(f)(1), "nor more than 9 feet" in the first sentence is removed, and the second sentence ("Pens for cattle shall not exceed 120 square feet.") is revised to read as follows:

§ 91.25 Space requirements for animals on ocean vessels.

(f)(1) * * * Pens for cattle weighing less than 1,100 pounds may not exceed 226 square feet. Pens for cattle weighing 1,100 pounds or more may not exceed 610 square feet. * * *

Done in Washington, DC, this 11th day of October, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-23919 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AGL-4]

Alteration of Additional Control Area; Sault Ste. Marie, MI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the description of the Sault Ste. Marie, MI, Additional Control Area (ACA). The Sault Ste. Marie nondirectional radio beacon (NDB) has been decommissioned and the current description which is based, in part, on the NDB is no longer correct.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240) Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 6, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the description of the Sault Ste. Marie, MI, ACA (53 FR 25345). The Sault Ste. Marie NDB has been decommissioned and the current description which is based, in part, on the NDB is no longer correct. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of the Sault Ste. Marie, MI, ACA. The Sault Ste. Marie NDB has been decommissioned and the ACA description has been amended to remove all references to that NDB. The altered description of the Sault Ste. Marie ACA slightly expands the ACA which includes small portions of uncontrolled airspace that will become controlled airspace. However, this

change will not adversely affect the flying public because all of the additional airspace is over Lake Superior and is rarely used.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1)—is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Additional control area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.163 [Amended]

2. Section 71.163 is amended as follows:

Sault Ste. Marie, MI [Revised]

That airspace extending upward from 1,200 feet AGL in an area bounded by a line beginning at lat. 46°33'00"N., long. 84°00'00"W., to lat. 46°13'00"N., long. 84°00'00"W., to lat. 46°58'30"N., long. 86°25'00"W., to lat. 48°07'00"N., long. 89°10'00"W., to lat. 48°23'00"N., long. 88°33'00"W., to the point of beginning. The airspace within Canada is excluded.

Issued in Washington, DC, on October 4, 1988.

Shelamo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23869 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-6]

Alteration of VOR Federal Airway V-68; CO

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-68 located in the vicinity of Durango, CO. The continued growth of Montrose, CO, and the substantial increase of air traffic to that resort area has created the need for an airway between Dove Creek, CO, and the Montrose terminal area. This action increases air safety and improves flight planning.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 25, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-68 located in the vicinity of Durango, CO (53 FR 18857). It is apparent that controlled airspace is necessary between Dove Creek, CO, and Montrose, CO, due to the rapid growth of Montrose which has resulted in a rapid increase in air traffic. Therefore, we are extending V-68 to Montrose which is located in the Rocky Mountains. This action increases air safety and improves traffic flow in that area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-68 located in the vicinity of Durango, CO. The continued growth of Montrose, CO, and the substantial increase of air

traffic to that resort area has created the need for an airway between Dove Creek, CO, and the Montrose terminal area. This action increases air safety and improves flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-68 [Amended]

By removing the words "From Farmington, NM, via" and substituting the words "From Montrose, CO; INT Montrose 200° and Dove Creek, CO, 069° radials; Dove Creek; Cortex, CO; Farmington, NM;"

Issued in Washington, DC, on October 4, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23868 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-14]

Establishment of VOR Federal Airway V-591 and Alteration of V-134; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Federal Airway V-591 located in the vicinity of Snow, CO, very high frequency omni-directional radio range (VOR). The new Federal Airway V-591 has been realigned via the new LINDZ Intersection to Snow VOR. This action improves the departure/arrival flow in the Aspen, CO, area.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 20, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-134 and establish new VOR Federal Airway V-591 in the Aspen, CO, area (53 FR 27350).

This action is to improve traffic flow in the Aspen terminal area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received; however, this amendment has minor changes from that proposed in the notice. The Carbondale radio beacon (RBN) which was a major facility in the airway realignment was determined to be unreliable and did not pass flight inspection. Therefore, the description of V-134 remains unchanged. The description of new airway V-591 was changed by removing Carbondale from the alignment and replacing it with the LINDZ Intersection, then to Snow VOR and beyond to maintain route continuity. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates new VOR Federal Airway V-591 from

Grand Junction to a new intersection called "LINDZ" to Snow VOR/DME to Kremmling, CO, VOR. In the notice, we proposed to realign V-134 and V-591 via the Carbondale RBN; however, flight inspection teams reported Carbondale RBN was unreliable, and therefore, it was eliminated from this docket. V-134 will not have a description change at this time. This action improves the traffic flow in the Aspen area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-591 [New]

From Grand Junction, CO; INT Grand Junction 075° and Snow, CO, 208° radials; Snow; INT Snow 013° and Kremmling, CO, 274° radials; to Kremmling.

Issued in Washington, DC, on October 6, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-23870 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73**[Airspace Docket No. 88-AGL-24]****Change of Controlling Agency for Restricted Area R-3404 Crane, IN****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This action changes the controlling agency for Restricted Area R-3404 Crane, IN, from Indianapolis Air Route Traffic Control Center (ARTCC) to Terre Haute Air Traffic Control Tower (ATCT). R-3404 is located entirely within the airspace delegated to Terre Haute ATCT, therefore, that facility should function as the controlling agency.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:**The Rule**

This amendment to Part 73 of the Federal Aviation Regulations changes the controlling agency for Restricted Area R-3404 from Indianapolis ARTCC to Terre Haute ATCT. FAR Part 73.17 defines the controlling agency as that air traffic control facility that may authorize transit through or flight within a restricted area. Since R-3404 lies entirely within the airspace delegated to Terre Haute ATCT, that facility is the more appropriate one to be designated as the controlling agency. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.34 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

R-3404 Crane, IN [Amended]

By removing the current controlling agency and substituting the following: Controlling agency, FAA, Terre Haute ATCT.

Issued in Washington, DC, on October 4, 1988

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23871 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE**Bureau of Export Administration****15 CFR Parts 785 and 799****[Docket No. 80501-8101]****Shipments of Medicine and Medical Supplies to Libya****AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations to clarify that shipments of medicine and medical supplies, food and other agricultural commodities may be made to Libya, as provided by § 785.7. A sentence setting forth this policy was inadvertently altered in an earlier version of that section (51 FR 8482). The new provision replaces the current language regarding goods exported pursuant to a Humanitarian License.

EFFECTIVE DATE: October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION: 1.

Because this rule concerns a military and foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of the Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553), including those requiring publication of a proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a military and foreign affairs function of the United States. This rule is not subject to the requirements of 13(b) of the EAA because it is not imposing new controls. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comments be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not involve a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Parts 785 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 768-799) are amended as follows:

PARTS 785 AND 799—[AMENDED]

1. The authority citation for 15 CFR Parts 785 and 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The second sentence of paragraph (a) of § 785.7 is revised to read as follows:

§ 785.7 Country Group S: Libya.

* * *

(a) * * * Except from this licensing requirement are medicines and medical supplies, food and other agricultural commodities, and commodities and data exported pursuant to special general licenses described in Parts 771 and 779.

* * *

§ 799.1 [AMENDED]

3. In Supplement No. 1 to § 799.1 (the Commodity Control List) the entries listed below are amended by revising the *Validated License Required* paragraph to read: "Country Groups SZ, and as required by Special South Africa policy below, except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical supplies."

Commodity Group 5 (Electronics and Precision Instruments), ECCN 6599G;

Commodity Group 6 (Metals, Minerals and their Manufactures), ECCN 6699G; and

Commodity Group 8 (Rubber and Rubber Products), ECCN 6899G.

Dated: October 11, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-23887 Filed 10-14-88; 8:45 am]

BILLING CODE 3510-DT-M

AFRICAN DEVELOPMENT FOUNDATION**22 CFR Part 1507****Privacy Act**

AGENCY: African Development Foundation.

ACTION: Final rule.

SUMMARY: This action establishes the policies and procedures to be followed by the African Development Foundation, in accordance with the requirements of the Privacy Act, to safeguard systems of records containing personal information, and to ensure that such records contain only accurate, relevant, timely, and material information. The regulations include procedures for individuals to identify records maintained by the Foundation which contain information about them, and to request the correction or deletion of records which are deemed inaccurate, immaterial, or untimely; and establishes fees for costs associated with responding to such requests.

EFFECTIVE DATE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, Tom Wilson, Director, Administration and Finance, (202) 673-3916.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 16153-16156 of the *Federal Register* of May 5, 1988, and invited comments for 60 days ending July 5, 1988. No comments were received.

Executive Order 12291

The African Development Foundation has determined that this rule is not a major rule for the purpose of E.O. 12291 because it is not likely to result in an annual effect on the economy of \$100 million or more.

Paperwork Reduction Act

This rule imposes no obligatory information requirements on the public.

Regulatory Flexibility Act of 1980

The President of the Foundation certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 1507

Privacy.

Accordingly, Part 1507 is added to 22 CFR Chapter XV to read as follows:

PART 1507—RULES SAFEGUARDING PERSONAL INFORMATION

Sec.

- 1507.1 Purpose.
- 1507.2 General policies.
- 1507.3 Definitions.
- 1507.4 Conditions of disclosure.
- 1507.5 Accounting for disclosure of records.
- 1507.6 Access to records.
- 1507.7 Contents of record systems.
- 1507.8 Fees.
- 1507.9 Judicial review.
- 1507.10 Exemptions.
- 1507.11 Mailing list.
- 1507.12 Criminal penalties.
- 1507.13 Reports.

Authority: 5 U.S.C. 522a.

§ 1507.1 Purpose.

The purpose of this part is to set forth the basic policies of the African Development Foundation ("the Foundation" or "ADF") governing the maintenance of systems of records containing personal information as defined in the Privacy Act of 1974 (5 U.S.C. 552a).

§ 1507.2 General policies.

It is the policy of the Foundation to safeguard the right of privacy of any individual as to whom the Foundation maintains personal information in any records system, and to provide such individuals with appropriate and complete access to such records, including adequate opportunity to correct any errors in said records. It is further the policy of the Foundation to maintain its records in such a fashion that the information contained therein is, and remains, material and relevant to the purposes for which it is collected. Information in such records will be collected, maintained, used or disseminated in a manner that assures that such action is for a necessary and lawful purpose, and that adequate safeguards are provided to prevent misuse of such information. Exemptions from records requirements provided in 5 U.S.C. 552a will be permitted only where an important public policy need for such exemptions has been determined pursuant to specific statutory authority.

§ 1507.3 Definitions.

(a) "Record" means any document, collection, or grouping of information about an individual maintained by the Foundation, including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or personal identification number, symbol, photograph, or other identifying

particular assigned to such individual, such as a finger or voiceprint.

(b) "System of Records" means a group of any records under the control of the Foundation from which information is retrieved by use of the name of an individual or by some identifying particular assigned to the individual.

(c) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term "Foundation" means the African Development Foundation or any component thereof.

(e) The term "individual" means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term "maintain" includes the maintenance, collection, use or dissemination of any record.

(g) The term "Act" means the Privacy Act of 1974 (5 U.S.C. 552a) as amended from time to time.

§ 1507.4 Conditions of disclosure.

The Foundation will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request or prior written consent of the individual to whom the record pertains or his or her agent or attorney, unless such disclosure is:

(a) To those officers and employees of the Foundation who have a need for the records in the official performance of their duties;

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use of the record compatible with the purpose for which it was collected;

(d) To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to Title 13, United States Code;

(e) To a recipient who has provided the Foundation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred to a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services, or designee, to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or

criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Foundation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person, pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if, promptly following such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(i) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any authorized representative, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction. If any record disclosed under compulsory legal process is subsequently made public by the court which issued it, the Foundation must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

(l) To consumer reporting agencies as defined in 31 U.S.C. 370(a)(3) in accordance with 31 U.S.C. 3711, and under contracts for collection services as authorized in 31 U.S.C. 3718.

§ 1507.5 Accounting for disclosure of records.

(a) With respect to each system of records under ADF control, the Foundation will keep an accurate accounting of routine disclosures, except those made to employees of the Foundation in the normal course of duties or pursuant to the provisions of the Freedom of Information Act. Such accounting shall contain the following:

(1) The date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Sufficient information to permit the construction of a listing of all disclosures at appropriate periodic intervals; and

(3) The justification or basis upon which any release was made including any written documentation required.

(b) The Foundation will retain the accounting made under this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) Except for disclosure made under paragraph (g) of § 1503.3, the Foundation will make the accounting under paragraph (a) of this section available to

the individual named in the record at his or her request.

(d) The Foundation will inform any person or other agency about any correction or notation of dispute made by the agency of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1507.6 Access to records.

(a) Except as otherwise provided by law or regulation, any individual, upon request made either in writing or in person during regular business hours, shall be provided access to his or her record or to any information pertaining to him or her which is contained in a system of records maintained by the Foundation. The individual will be permitted to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) An individual will be notified, upon request, if any Foundation system of records contains a record pertaining to him or her. Such request may be made in person during regular business hours, or in writing over the signature of the person making the request. Individuals requesting the information will be required to identify themselves by providing their names, addresses, and a signature. If they are requesting disclosure in person, they are also required to show an identification card, such as a drivers license, containing a photo and a sample signature. If the request is received through the mail, the Foundation may request such information as may be necessary to assure that the requesting individual is properly identified. This may include a requirement that the request be notarized with a notation that the notary received an acknowledgement of identity from the requester.

(c) A record may be disclosed to a representative of the person to whom a record relates when the representative is authorized in writing by such person to have access.

(d) Requests for access to or copies of records should contain, at a minimum, identifying information needed to locate any given record, and a brief description of the item or items of information required. If the individual wishes access to specific documents, the request should identify or describe, as nearly as possible, such documents. The request should be made to the Director, Administration and Finance, African

Development Foundation, 1625 Massachusetts Avenue NW., Suite 600, Washington, DC 20036. Personal contacts should normally be made during the regular duty hours of the officer concerned, which are 8:30 a.m. to 5:00 p.m. Monday through Friday.

(e) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Foundation. Mail or personal requests for documents which are not in the immediate custody of ADF or which are otherwise not immediately available, will be acknowledged within ten working days of receipt, and the records will be provided as promptly thereafter as possible.

(f) Special procedures may be established by the President of the Foundation governing the disclosure to an individual of his or her medical records, including psychological records.

(g) Any individual may request the Director, Administration and Finance, to amend any Foundation record pertaining to him or her. Not later than 10 working days after the date of receipt of such request, the Director, Administration and Finance, or his/her designee, will acknowledge such receipt in writing. Promptly after acknowledging receipt of a request, the Director, Administration and Finance or his/her designee will:

(1) Correct any portion of the record which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the Foundation's refusal to amend the record in accordance with the request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the President of the Foundation, or his/her designee, and the name and address of such official; or

(3) Refer the request to the agency that has control of and maintains the record when the record requested is not the property of the Foundation, but of the controlling agency.

(h) Any individual who disagrees with the refusal of the Director, Administration and Finance to amend his or her record may request a review of that refusal. Such request for review must be made within 30 days after receipt by the requester of the initial refusal to amend. The President of the Foundation, or designee, will complete such review not later than 30 working days from the date on which the individual requests such review, and make a final determination, unless for good cause shown, the President or designee extends such 30-day period and notifies the requester in writing that

additional time is required to complete the review. If, after review, the President or designee refuses to amend the record in accordance with the request, the individual will be advised of the right to file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal, and also advised of the provisions in the Act for judicial review of the President's determination.

(i) In any disclosure containing information about which the individual has filed a statement under paragraph (g) of this section, the Foundation will clearly note any part of the record which is disputed and provide copies of the statement and, if the Foundation deems it appropriate, copies of a concise statement of the Foundation's reasons for not making the amendment requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 1507.7 Contents of records systems.

(a) The Foundation will maintain in its records only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which it was acquired as authorized by statute or Executive Order.

(b) The Foundation will collect information, to the greatest extent practicable, directly from the individual to whom the record pertains when the information may result in adverse determinations about the individual's rights, benefits and privileges under Federal programs.

(c) The Foundation will inform each individual whom it asks to supply information on any form which it uses to collect the information, or on a separate form that can be retained by the individual, of:

(1) The authority which authorizes the solicitation of the information and whether provision of such information is mandatory or voluntary;

(2) The purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d) of this section; and

(4) The effects on the individual, if any, of not providing all or any part of the requested information.

(d) Subject to the provisions of paragraph (k) of this section, the Foundation will publish in the *Federal Register*, at least a notice of the existence and character of its system(s) of records upon establishment or revision. This notice will include:

(1) The name and location of the system or systems;

(2) The categories of individuals on whom records are maintained in the system or systems;

(3) The categories of records maintained in the system or systems;

(4) Each routine use of the records contained in the system or systems, including the categories of users, and the purpose of such use;

(5) The policies and practices of the Foundation regarding storage, retrievability, access controls, retention, and disposal of the record;

(6) The title and business address of the Foundation official or officials responsible for the system or systems of records;

(7) The Foundation's procedures whereby an individual can be notified at his or her request if the system or systems of records contains a record pertaining to him or her;

(8) The Foundation's procedures whereby an individual can be notified at him or her request how he or she can gain access to any record pertaining to him or her contained in the system or systems of records, and how he or she can contest its content; and

(9) The categories of sources of records in the system or systems.

(e) All records used by the Foundation in making any determination about any individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(f) Before disseminating any record about an individual to any person other than an agency or pursuant to 5 U.S.C. 552, the Foundation will make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Foundation purposes.

(g) The Foundation will maintain no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to, and within the scope of, an authorized law enforcement activity.

(h) The Foundation will establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record. Each such person will be instructed regarding such rules and the requirements of 5 U.S.C. 552a. The instruction will include any other rules and procedures adopted pursuant to 5 U.S.C. 552a, and the penalties provided for noncompliance.

(i) The Foundation will establish appropriate administrative, technical,

and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(j) At least 30 days prior to the publication of the notice in the **Federal Register** regarding the routine use of the records contained in the Foundation's system or systems of records, including the categories of users and the purpose of such use pursuant to paragraph (d) of this section, the Foundation will also:

(1) Publish a notice in the **Federal Register** of any new or revised use of the information in the system or systems maintained by the Foundation; and

(2) Provide an opportunity for interested persons to submit written data, views, or arguments to the Foundation.

§ 1507.8 Fees.

Fees to be charged, if any, to any individual for making copies of his or her record will be as follows:

(a) Photocopy reproductions from all types of copying processes, each reproduction image, \$0.10 per page.

(b) Where the Foundation undertakes to perform for an individual making a request, or for any other person, services which are very clearly not required to be performed under section 552a, Title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the Foundation, etc.), the question of charging fees for such services will be determined by the Director of Administration and Finance, in light of the Federal user charge statute (31 U.S.C. 483a), and any other applicable law.

(c) No fees shall be charged for search time expended by the Foundation to produce a record.

§ 1507.9 Judicial review.

Any person may file a complaint against the Foundation in the appropriate U.S. district court, as provided in 5 U.S.C. 552a(g), whenever the Foundation:

(a) Makes a determination not to amend an individual's record in accordance with his or her request, or fails to make such review in conformity with that section; or

(b) Refuses to comply with an individual's request; or

(c) Fails to maintain any record concerning an individual with such

accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(d) Fails to comply with any other provision of 5 U.S.C. 552a, or any Foundation regulation promulgated thereunder, in any such a way as to have an adverse effect on an individual.

§ 1507.10 Exemptions.

No Foundation system or systems of records, as such, are exempted from the provisions of 5 U.S.C. 552a, as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

§ 1507.11 Mailing list.

An individual's name and address may not be sold or rented by the Foundation unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public.

§ 1507.12 Criminal penalties.

Section 552a(e), Title 5, United States Code, provides that:

(a) Any officer or employee of the Foundation, who, by virtue of his or her employment or official position, has possession of, or access to, Foundation records which contain individually identifiable information, the disclosure of which is prohibited by 5 U.S.C. 552a, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(b) Any officer or employee of the Foundation who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Foundation under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

§ 1507.13 Reports.

(a) The Foundation shall provide to Congress and the Office of Management and Budget advance notice of any proposal to establish or alter any system or records as defined herein. This report will be submitted in accordance with

guidelines provided by the Office of Management and Budget.

(b) If at any time Foundation system or systems of records is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the records contained in such system or systems will be separately listed and reported to the Office of Management and Budget in accordance with the then prevailing guidelines and instructions of that office.

Dated: April 28, 1988.

Leonard H. Robinson, Jr.,

President, African Development Foundation.

[FR Doc. 88-23857 Filed 10-14-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-88-02]

Regulated Navigation Area; Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has determined that the Regulated Navigation Area at Isthmus Cove, Catalina Island, California is no longer justified. For this reason, the Coast Guard is deleting the Regulated Navigation Area at Isthmus Cove.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Lodge, Office of Aids to Navigation, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822-5399. Phone number: (213) 499-5410.

SUPPLEMENTARY INFORMATION: On June 6, 1988, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (53 FR 20653). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Michael J. Lodge, project officer, and Lieutenant G. R. Wheatley, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received addressing this rule making.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231, and 50 U.S.C.

191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will have minor impact because the deletion of the Regulated Navigation Area will increase the area available for vessels to anchor.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33 Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 8.04-1, 8.04-6 and 160.5.

§ 165.1110 [Removed]

2. Section 165.1110 is removed.

Dated: October 4, 1988.

Terry Lucas,

Captain, U.S. Coast Guard Commander,
Eleventh Coast Guard District, Acting.

[FR Doc. 88-23927 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3461-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces disapproval of the Chicago portion of the Illinois State Implementation Plan (SIP) for Ozone and the extension under section 110(a)(2)(I) of the Clean Air Act

(Act) of a pre-existing construction ban on new and modified major sources of volatile organic compounds (VOC), a precursor of ozone pollution, located in that area. USEPA's action is based upon a plan which was submitted by the State to satisfy the requirements of Part D of the Act.

EFFECTIVE DATE: The final rulemaking becomes effective on November 16, 1988.

ADDRESSES: Copies of the SIP revisions, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Regional V Office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

A copy of today's disapproved revisions to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 14, 1987 (52 FR 26424), the United States Environmental Protection Agency (USEPA) proposed to disapprove a revision to the Illinois SIP because the revision did not satisfy the requirements of Part D of the Act. While the July 4, 1987, proposed rulemaking concerned the SIP for the Illinois portion of both the Chicago and East St. Louis Metropolitan areas, today's final rule only concerns the SIP for the Illinois portion of Chicago area. The Chicago area ozone demonstration includes six Counties: Cook, DuPage, Kane, Lake, McHenry and Will. Four of these Counties, Cook, DuPage, Kane and Lake, are presently designated as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. USEPA's final action on the SIP for the East St. Louis area will be the subject of a separate rulemaking. In the July 14, 1987 notice USEPA cited several deficiencies which are paraphrased below.

1. The SIP revision did not contain a persuasive demonstration that the

Chicago ozone nonattainment area would attain compliance with the ozone national ambient air quality standards (NAAQS) by December 31, 1987, or any near-term, fixed date thereafter. USEPA based this conclusion on two facts. First, the State was behind schedule in adopting all stationary source control measures. Thus it was unlikely that Illinois could achieve all the projected emission reductions by December 31, 1987 or even shortly thereafter. Second, air quality data for 1984-1986 showed little or no improvement over the 1979-81 peak levels; that information called into question whether or not the quality of emission reductions that the plan had projected would be achieved by the control measures adopted would be enough to produce attainment in the near term.

2. Due to delays in adopting certain control measures, the State failed to demonstrate reasonable further progress (RFP) toward attainment of the Ozone NAAQS.

3. The State failed to adopt the required IEPA/Secretary of State joint memorandum *Technical Procedures for Enforcement*, an essential portion of Illinois' vehicle inspection and maintenance program.

(It should be noted that the joint memorandum was finally adopted and submitted to USEPA on July 1, 1987, thereby eliminating this third deficiency.)

USEPA also proposed to extend a pre-existing major source construction ban imposed pursuant to section 110(a)(2)(I) of the Act for the Illinois portions of the Chicago ozone nonattainment area.

Section 110(a)(2)(I) growth restrictions have been in effect in all Illinois primary nonattainment areas (as to all pollutants for which those areas are designated primary nonattainment) since May 26, 1981, when the Seventh Circuit Court of Appeals invalidated USEPA's approval of the State's new source review rules on State law procedural grounds. See *CBE v. EPA*, 649 F.2d 522 (7th Cir. 1987).

USEPA received comments on the General Preamble to the July 14, 1987 proposed disapproval of a number of ozone and carbon monoxide plans and on the specific proposal to disapprove the Illinois SIP revision. This final rulemaking responds only to the comments on the proposal to disapprove the Illinois Ozone SIP. USEPA will respond to comments on the General Preamble that do not relate to the Illinois SIP rulemaking in a subsequent Federal Register notice, in connection with USEPA's final Post-1987 Ozone Nonattainment Policy.

Today's final rulemaking disapproves that portion of the Illinois Ozone SIP which deals with the Chicago nonattainment area because it does not satisfy the requirements of Part D of the Act. In particular, the plan neither includes a persuasive demonstration that the Chicago area will attain the ozone NAAQS by any near-term fixed date, nor shows reasonable further progress toward attainment of the ozone NAAQS. In the future, USEPA will take separate rulemaking action on each component of the Illinois plan other than the attainment and RFP demonstrations for Chicago, which are formally disapproved today. Some of the comments that follow deal with both the Chicago and East St. Louis areas. Today, USEPA will respond only with regard to comments related to Chicago. In the future, USEPA will take formal rulemaking action with respect to the East St. Louis portion of the Illinois Ozone SIP revision.

This final rulemaking also extends the construction ban already imposed pursuant to Section 110(a)(2)(I) of the Act, on major new stationary sources and major modifications of stationary sources of VOC (precursor of ambient ozone) in the four counties presently designated nonattainment within the Illinois portion of the Chicago ozone demonstration area.

II. Responses to Comments on the Proposed Rulemaking

Most of the comments summarized below were submitted by Michael J. Hayes, Manager of the Division of Air Pollution Control of IEPA on October 29, 1987. The Illinois Chamber of Commerce submitted comments, which are addressed in the responses below. General comments submitted by D. Theiler of the State of Wisconsin are addressed here, or in the Response to comments on action relating to the proposed disapproval of the Indiana SIP, published separately in the *Federal Register*.

1. Comment

Since the July 14, 1987 notice of proposed rulemaking fails to give notice of what the USEPA intends by its proposal, as required by the Federal Administrative Procedures Act, the USEPA must repropose, specifying what action it is taking, on what elements, and what its rationale is. In its July 14, 1987 notice of proposed rulemaking, the USEPA proposed to disapprove the Illinois Ozone SIP. The notice, however, does not state the precise nature of that disapproval. Nowhere does the USEPA propose to disapprove any specific element of Illinois' Ozone SIP submittal.

If USEPA is proposing to disapprove Illinois' attainment demonstration, this should be specifically stated, as should the basis for, and consequences of the disapproval. An important issue underlies the uncertainties of USEPA's proposed rulemaking. This issue is whether USEPA is taking the position that, or reviewing the SIP on the basis of a standard which means that, the USEPA can never approve the 1982 Ozone SIP submittal of the State of Illinois. It must be noted that Illinois has submitted to the USEPA the same rules which have led to USEPA approval of the Ozone SIPs of other States. It is, therefore, arbitrary and capricious to disapprove the SIP submittal for Illinois, especially in light of the potential consequences of such a disapproval. USEPA's position on the Illinois SIP is a matter of vital interest and concern to the State, to which adequate notice and an opportunity to comment must be provided. Specifically, would USEPA's proposed rulemaking mean that USEPA will not be able to approve otherwise approvable elements of the SIP even after the SIP itself has already been disapproved?

Response

The USEPA makes it very clear, in its proposed rulemaking of July 14, 1987 (52 FR 26424), that it is proposing to disapprove the Illinois Ozone SIP because it does not meet all requirements of Part D of the Act. In particular, the plan does not demonstrate timely attainment of the ozone NAAQS and reasonable further progress toward attainment during the interim. Section 172(a)(2) of the Act requires that the SIP revision provide for attainment of the primary NAAQS for photochemical oxidants (now covered by the ozone NAAQS) by no later than December 31, 1987. Section 172(b)(3) requires that the SIP revision provide for reasonable further progress (RFP) in the interim. The proposed rulemaking makes it clear that the USEPA does not believe that Illinois' 1982 SIP revision meets either of these requirements based on recent air quality data and delays in the adoption and implementation of mobile and stationary source control measures.

The July 14, 1987 (52 FR 26427) proposed rulemaking also states that "[i]n separate *Federal Register* notices, USEPA will propose rulemaking on the stationary and mobile source control measures adopted by the State". Thus, while the Part D plan, as a whole, cannot be approved, USEPA will take rulemaking action on separate components of the plan. Some of those components might be approved as part of the federally enforceable SIP if they

would not interfere with RFP and timely attainment. Since USEPA cannot approve the Part D plan as a whole, USEPA proposed to maintain, pursuant to section 110(a)(2)(I) of the Act, an existing major new source construction and major source modification ban for the Chicago ozone nonattainment area until such time as the SIP deficiencies are eliminated and the SIP, as a whole, is approved.

On November 24, 1987 (52 FR 45044), USEPA proposed a policy of dealing with areas that failed to demonstrate attainment by the December 31, 1987 attainment date. After reviewing all public comments on that proposed policy, and in the absence of any Congressional action on amendments to the Clean Air Act, USEPA intends to publish a final policy which will further delineate the type of SIP revision Illinois must submit to lift the ban resulting from today's disapproval of the Illinois ozone attainment demonstration for the Chicago area.

IEPA asserts that USEPA is acting arbitrarily because it proposes to disapprove rules here which it has approved in other instances. Today's rulemaking, however, does not concern itself with individual rules to control volatile organic compound emissions from stationary and mobile sources but rather the adequacy of the control strategy as a whole to attain and maintain the ozone NAAQS. USEPA has indeed approved Part D ozone plans for other areas when those plans included the same types of rules Illinois has been promulgating. However, those approvals were based on records and air quality data that showed at the time that those plans would produce timely attainment. Subsequent events, including delays in Illinois' rulemaking and new air quality data, make approval of the Illinois SIP at this time unwarranted. The issue of whether the individual Illinois rules will meet particular Part D requirements (e.g., RACT) will be addressed in separate *Federal Register* notices.

2. Comment

USEPA has arbitrarily selected Illinois and several other States for disapproval of Ozone SIPs and has done so for reasons not stated in the notice or understood by Illinois. The July 14, 1987, proposed rulemakings selected eight States for action on pending Ozone and Carbon Monoxide (CO) SIPs. There were no proposed approvals in the package of proposed rulemakings. There appears to be no consistent basis for the selection of the States singled out for special action. This is particularly true since USEPA has had the legal

obligation to act upon the SIPs for an extended period of time. Acting on some States' SIPs and not on others' creates arbitrary results for these States, including Illinois.

The group of States for which proposals were made in the July 14, 1987, *Federal Register* does not include all States without approved Ozone SIPs. The proposal also does not include all areas which USEPA believes will have ozone nonattainment problems after the end of 1987. Many States with extension areas for which USEPA has not acted on SIPs were not proposed for disapproval by the USEPA. These areas include: Detroit, Michigan; Cleveland, Ohio; Cincinnati, Ohio; and Richmond, Virginia. There are also numerous areas for which USEPA considers States not to have submitted adequate Ozone SIPs in response to SIP calls, such as for: Birmingham, Alabama; Phoenix, Arizona; Santa Barbara, California; Miami, Florida; Baton Rouge, Louisiana; Kansas City, Missouri; Tulsa, Oklahoma; Memphis, Tennessee; and El Paso, Texas. USEPA has also proposed no disapprovals for the numerous States, many with significant nonattainment areas, which have SIPs that were conditionally approved, but for which outstanding conditions have not been satisfied. Some States have SIPs with outstanding conditions comparable in air quality significance to the deficiencies USEPA is citing as the basis for the proposed disapproval of SIPs cited in the July 14, 1987, proposed rulemaking; yet the USEPA is not proposing to disapprove any of the unsatisfied conditions or the overall SIPs due to those failures.

This issue was raised with USEPA in a June 11, 1987 letter from Michael J. Hayes, Illinois Environmental Protection Agency (IEPA), to J. Craig Potter (USEPA). In the July 20, 1987, USEPA response, the rationale for disapproval is offered: " * * * for all of the SIPs recently proposed for disapproval, the reason for the proposed action was that * * * these SIPs did not, in USEPA's opinion, fulfill the Clean Air Act requirement to demonstrate attainment by a near-term fixed date." As discussed, no disapprovals have been proposed for the other States that fall into this category, so some other basis for selection must have been used.

All States are entitled to equitable treatment by USEPA in the processing of their SIP submittals. Furthermore, it is arbitrary and capricious for USEPA to use the selective timing of its SIP actions as an instrument of unstated policies, especially when the deadline for acting on the submittals has already passed.

Response

USEPA acknowledges that USEPA has not taken action yet on a number of SIP submittals and outstanding SIP conditions have not yet been acted on by the USEPA. As indicated in the July 14, 1987, general preamble and notice of future actions (52 FR 26404), the rulemaking actions started on July 14, 1987, were by no means the last actions USEPA plans regarding the 1982 SIPs and post-1982 SIPs. Therefore, although the Illinois SIP was among those addressed on July 14, 1987, it will be followed by rulemaking on other SIPs.

USEPA did find it necessary to prioritize its rulemaking. USEPA's delayed rulemaking does not warrant further delay as IEPA seems to imply. Rather, USEPA must move forward incrementally, towards resolving all of the outstanding SIP problems. The actions selected for July 14, 1987, were judged to have the highest priority because of a combination of continued air quality problems and incomplete SIP or incomplete rule submittals. USEPA was convinced that all of the SIPs acted upon applied to areas very unlikely to attain the ozone or CO standard by December 31, 1987, or even the near term thereafter. In addition, at the time of the July 14, 1987, proposed rulemaking, among the States lacking approved SIPs, Illinois lagged far behind the others in submitting adopted stationary source control rules.

All outstanding SIPs will be judged on their merits considering current air quality and the status of rule submittal. USEPA is currently involved in preparing such rulemaking actions for other areas.

3. Comment

USEPA's past failure to take any final action on the 1982 Illinois Ozone SIP submittal or any element thereof precludes disapproval of the attainment demonstration at this time and precludes the imposition of any sanction for failure to have an adequate SIP approved by the USEPA. On June 30, 1982, the IEPA submitted the proposed Illinois SIP for Ozone for the Chicago and Metro-East St. Louis areas. Since that date, USEPA has failed to take final action on any element of the SIP submittal or any of the numerous rules which have been submitted as elements of the SIP. For USEPA to fail to act on Illinois' SIP submittal, and particularly its attainment demonstration, for an extended period of years and then to propose to disapprove it immediately before the final deadline is arbitrary and improper. Such a position undermines the entire SIP process and the role of the

States in that process. The States simply can not carry out the role given them by Congress in the face of such inaction by USEPA.

Response

As noted in the July 14, 1987, proposed rulemaking (52 FR 26125), USEPA initiated rulemaking action on the Illinois SIP on two occasions: February 3, 1983, (48 FR 5110), and on August 15, 1984 (49 FR 32601). The February 3, 1983, rulemaking proposed to disapprove the demonstration of attainment. Following this proposal, USEPA received a number of submittals from the IEPA revising the demonstration of attainment or promising to correct noted SIP deficiencies which would affect the demonstration of attainment. Rather than publish a final disapproval of the demonstration of attainment, the USEPA assumed that Illinois was making a good faith effort to correct SIP deficiencies. The iterative negotiation process which followed acted to delay the SIP rulemaking process. Thus, it is very misleading to cite June 30, 1982, as the date upon which USEPA had the current SIP revision before it.

Further, USEPA's August 15, 1984 (49 FR 32601), proposed approval clearly stated that USEPA was proposing rulemaking on the draft CO and ozone SIP revision at the request of the State to parallel process the action, 49 FR at 32601. USEPA could not finally approve the SIP until all the requisite control measures were finally adopted and submitted. USEPA withheld taking further rulemaking until it was certain the State could not complete implementation of its plan by December 31, 1987. Illinois submitted the final portion of the required control strategy on April 8, 1988, well after the December 31, 1987, implementation deadline.

Finally, even assuming an extended period of USEPA review, USEPA cannot be estopped from disapproving a SIP. Rather, the appropriate action is to take final rulemaking action based on the record as it has evolved during the intervening years, which is what USEPA announces today.

4. Comment

Since 1983, when the IEPA proposed to use data from the Racine, Wisconsin monitoring site as its design value for the purpose of determining the ozone attainment demonstration requirements, Illinois' attainment demonstration has not changed in any significant manner. As set out in a history of State submittals, USEPA rulemaking, and USEPA correspondence (contained in the State's comments on the July 14,

1987, proposed rulemaking), that attainment demonstration has been accepted by the USEPA; indeed, the USEPA has told the IEPA that the attainment demonstration was properly done and, if the control measures were put into place pursuant to that demonstration, the SIP would be approved. Therefore, the demonstration itself could have and should have been approved by the USEPA sometimes during the last four years.

Response

An ozone attainment demonstration is composed of two basic components: (1) A modeling analysis to determine the appropriate VOC emission reduction requirement; and (2) a projection of the timing and magnitude of emission reductions resulting from the implementation of emission control regulations. USEPA agreed that the IEPA had an acceptable modeling analysis completed as early as 1983. In addition, USEPA believed that the emission reductions projected at that time were sufficient, based on the modeling analysis, to result in attainment of the ozone standard. USEPA proposed such a finding in the August 15, 1984, proposed rulemaking (49 FR 32601). That notice, however, noted that the acceptability of the demonstration of attainment was based on the assumption that all required emission controls would be in place by December 31, 1987.

On April 22, 1985, the IEPA submitted a revised demonstration of attainment further claiming to achieve sufficient VOC emission reductions by the attainment deadline. As USEPA reviewed this demonstration of attainment, it became apparent that Illinois was falling behind schedule in adopting and implementing VOC emission control rules for stationary sources. It is now apparent that the second component of Illinois' attainment demonstration for the Chicago area is not supported by the schedule for rule adoption and implementation. This raises significant doubts about the validity of the attainment demonstration.

Although the required rules have been adopted and submitted to USEPA, several were not adopted until after the December 31, 1987, attainment deadline. During the delays in rule adoption, USEPA has become aware that the ozone levels have not decreased nearly as much as expected in the Chicago area, even accounting for those delays. (This issue is more fully discussed in a July 5, 1988, technical support document, and a subsequent technical support document of September 1988, which are

available for inspection at the Region V Office listed above.) The ozone levels have raised questions about the level of the VOC emission reductions calculated in the ozone attainment demonstration. Based on current data, it appears that even with the rules recently submitted by the State, the VOC emission reduction requirements for the Chicago area are insufficient to assure attainment of the ozone standard in the near term. Although USEPA could have approved the SLIP's ozone attainment demonstration in 1984, it is incorrect to do so now given the current ozone data and emission control status.

Comment

USEPA should not now be permitted to disapprove Illinois' attainment demonstration on a separate basis from the rest of the SIP since it has for years refused to consider the demonstration separately for purposes of approval. To hold otherwise would be inconsistent with the action USEPA has taken in other States where USEPA has in fact approved attainment demonstrations even though all the rules were not in final approved form. For example, since its July 14, 1987, proposal, the USEPA has made just such a proposal for Kansas City, Kansas (52 FR 36963, October 2, 1987). USEPA has used the conditional approval method for approving the attainment demonstration of other States lacking adopted rules. This has occurred in two States bordering Illinois, the States of Missouri and Wisconsin, where USEPA approved attainment demonstrations without final approval of the States' required rules. USEPA has also proposed to do the same for Indiana. In fact, within the last three years, USEPA has approved the State of Missouri's attainment demonstration (51 FR 31328, September 3, 1986), which has the same design value and design site as the Illinois SIP for the Metro-East St. Louis area.

Response

It is true that USEPA conditionally approved the ozone attainment demonstrations in the Missouri and Wisconsin SIPs. This was done when it could be assumed that all required control measures would be adopted, USEPA approved, and implemented by the attainment deadline. In addition, USEPA was convinced that the required VOC emission reduction requirements in the two States were sufficient to attain the ozone standard.

Two facts distinguish the Illinois SIP from those which USEPA conditionally approved. First, the attainment date has passed and Illinois still has several stationary source control measures

which have not been approved by USEPA. The reductions from these measures are necessary to demonstrate attainment and for plan approval but several of these measures had not been implemented by the December 31, 1987, attainment date. Second, current air quality data convinces USEPA that even if those rules are fully implemented in the near term, Illinois will not attain the ozone standard in the Chicago area during that period.

A number of distinctions may be noted between the Kansas City, Kansas SIP and the Illinois SIP. First, the Kansas City, Kansas SIP is a post-1982 SIP revision mandated by a USEPA SIP call issued on February 20, 1985, rather than a SIP revision required by July 1, 1982. The progress made by Kansas appears to be more rapid than that made by Illinois in adopting and submitting the required rules. Second, air quality and emissions estimates current at the time of the conditional plan approval, showed that the ozone standard could be attained by a fixed, near-term date sometime in 1988. The same cannot be said for the Chicago ozone demonstration area. Third, the attainment demonstration for Kansas City was derived considering only previously adopted control measures. The Kansas draft proposed for approval in the October 2, 1987, proposed rulemaking (52 FR 36967) will supersede the older adopted rules, thereby providing additional VOC emission reductions. At the time, EPA believed this would provide additional assurance of timely attainment. The currently adopted regulations in Illinois are not sufficient to guarantee attainment of the ozone standard by a fixed, near-term date. Finally, it should be noted that the USEPA did not complete final rulemaking on the Kansas City, Kansas SIP until the State of Kansas had submitted finally adopted regulations (52 FR 17700, May 18, 1988).

6. Comment

It is arbitrary and capricious for USEPA to disapprove the Illinois Ozone SIP without acting on the elements which comprise the ozone submittal. It appears that USEPA is proposing an overall disapproval of the State's Ozone SIP without acting on any of the individual elements which comprise the submittal other than the vehicle inspection/maintenance (I/M) program. Some elements of the Illinois SIP have been pending before the USEPA in final form for over four years, and other elements have been pending before the USEPA under its own parallel processing procedure while the rules

comprising the elements are pending for adoption by the Illinois Pollution Control Board (IPCB).

One of the reasons this proposal by USEPA is inappropriate is that it leads to general disapproval without ever incorporating into the SIP the specific elements of progress which have been made by Illinois. Failure to act on elements of the SIP deprives the State of an opportunity to exercise the right to appeal granted by the Act because USEPA never makes the disapproval decisions which might be appealed and instead holds the rules until the State changes them in a manner consistent with USEPA's interpretation of what is RACT. This inaction is coercive because a failure to act has the same effect as a disapproval. This is an exercise in discretion that USEPA does not possess under the Act and which violates the SIP review deadlines (four months after the submittal of a SIP revision) given to the USEPA by Congress.

During the past four to five years, USEPA has been ambivalent on the issue of whether all the elements of a SIP have to be present before USEPA can take action, or whether EPA can take action on individual elements before acting on the entire plan especially when done for the purpose of forcing the State to adopt exactly the measures which USEPA wants to have adopted.

Pursuant to Sections 110(a) and 172 of the Act, USEPA has an obligation to take action on all SIP revisions which are submitted to it. IEPA questions USEPA's ability to take action to disapprove the SIP as a whole without analyzing all portions of the SIP that are before it.

Response

USEPA continues to believe that it can act independently on individual portions of the SIP. For example, on July 11, 1985 (50 FR 28228), USEPA proposed separate rulemaking on Illinois' stationary source RACT II rules. That action proposed to approve some rules and disapprove others. USEPA proceeded with final rulemaking for those rules found to be acceptable on November 27, 1987 (52 FR 45333). Illinois has revised the rules proposed for disapproval and submitted them to USEPA. The State of Illinois has submitted to USEPA RACT III and major non-CTG RACT rules for the required categories. These rules are in various stages of review and rulemaking development. Finally, as noted in the July 14, 1987, proposed rulemaking, the USEPA is taking independent action on I/M in Illinois. All of these actions are relatively independent of each other and

independent of USEPA's actions on the SIP's demonstration of attainment. USEPA intends to proceed expeditiously to complete rulemaking on them. It has not intentionally delayed rulemaking on these SIP elements.

The review of the demonstration of attainment, unlike the review of other portions of the SIP, does depend on the status of rule adoption and implementation for the various source categories as a whole. When evaluating the progress of emission reductions towards attainment of the air quality standard by a particular date, it is important to establish the likelihood that a projected emission reduction will actually occur. If rule development and implementation is significantly delayed beyond the attainment deadline, it is inappropriate to assume that the rule(s) will have the claimed impact at the attainment deadline. USEPA's schedule for acting on individual rules that the State has adopted is irrelevant to the analysis of the adequacy of the attainment demonstration. Section 172(a)(2) of the Act requires that SIPs demonstrate attainment of the ozone standard no later than December 31, 1987 in extension areas. In light of the delay in the Illinois rulemakings and the intervening air quality data, USEPA finds that the Illinois SIP does not convincingly demonstrate attainment by December 31, 1987, or even shortly thereafter. Thus, as indicated in the notice, USEPA finds that the SIP does not meet all requirements of the Act.

This does not mean that all elements of the SIP are disapprovable. It simply means that at least one of the Act's required elements is not present. USEPA considers the demonstration of attainment to be a crucial element of the SIP. In the absence of an adequate attainment demonstration, USEPA cannot approve the overall Part D SIP.

7. Comment

In the July 14, 1987, notice of proposed rulemaking and the April 13, 1987, technical support document (TSD), "Status of RACT Rules in Illinois and Indiana Extension Areas", USEPA has listed the various RACT rules which have been adopted by the IPCB or are pending before the IPCB. There is, however, no discussion whatsoever of the reductions in emissions that the RACT rules have achieved or will achieve, and there is no discussion of the impact of these rules on Illinois' attainment of the ozone standard. USEPA merely asserts that it proposes to find that "the plan as a whole, taking into account legally adopted control measures, does not adequately demonstrate attainment of the NAAQS.

* * * Nowhere does USEPA identify which "legally adopted control measures" it has taken into account in making its proposed finding. Whether these measures are only those that USEPA has approved, and whether these include regulations which the IPCB has adopted but which USEPA required to be corrected before it will take final action cannot be divined from the July 14th notice; both the notice of proposed rulemaking and the supporting TSD are completely silent on this point.

At this time, there are pending before USEPA for action ten sets of RACT rules which have been adopted in final form by the IPCB. There are an additional eight sets of rules pending before the IPCB. At this time, only two of these pending rules are not likely to be adopted in final form by the end of 1987: the synthesized pharmaceutical manufacturing RACT rule and the non-CTG generic RACT rule. These two RACT regulations account for one percent of the SIP emission reduction requirement in the Chicago area.

Response

The July 14, 1987, proposed rulemaking was actually supported by a number of Technical Support Documents (TSDs), including: an April 15, 1987, TSD, "Approvability of Ozone Demonstrations of Attainment in the Illinois and Indiana"; an April 14, 1987, TSD, "Review of the Illinois and Northwest Indiana Ozone SIPs Based on Recent Air Quality Data, and an April 10, 1987, TSD, "Review of the Inspection and Maintenance and Transportation Control Portions of Illinois and Indiana 1982 Ozone and Carbon Monoxide SIPs", as well as the April 13, 1987, TSD noted by the commenter. The April 15, 1987, TSD notes that complete RACT adoption and implementation is unlikely to occur by December 31, 1987. It is the April 14, 1987, TSD, however, which explains that the ozone NAAQS is unlikely to be attained by December 31, 1987, in the Chicago area. This TSD compared the 1979 to 1981 ozone data with the 1984 to 1986 ozone data and concluded the VOC emission reduction requirements for the areas would change little between a base year of 1979 and a base year of 1984. The TSD then compared the emission reductions projected by the SIP to occur between 1984 and the end of 1987. The TSD concludes that the needed VOC emission reductions significantly exceed the SIP-projected 1984-1987 VOC emission reductions. Thus, the TSD concludes that even assuming full implementation, the ozone standard will not be attained by December 31, 1987, or

even shortly thereafter in the Chicago area. This is the primary basis of the proposed disapproval of the SIP's attainment demonstration.

The July 14, 1987, proposed rulemaking concluded this even while noting that a number of RACT II and III and major source non-CTG RACT rules are still awaiting final adoption by the IPCB. Since the notice of proposed rulemaking, USEPA has received from the State IPCB finally adopted rules for the following source categories: leaks from gasoline tank trucks; miscellaneous metal coating; graphic arts; external floating roofs; large petroleum dry cleaners; polystyrene resin manufacturing; heatset web offset printing; wood furniture coating; synthetic organic chemical manufacturing industry-leaks; synthesized pharmaceutical manufacturing, a generic rule covering major sources in nonattainment areas; and synthetic organic chemical manufacturing industry-air oxidation. These rules are undergoing USEPA review and will be the subject of separate rulemaking.

On April 8, 1988, USEPA received the IPCB finally adopted rules for two source categories: manufacturing of synthesized pharmaceuticals; and major, non-CTG sources not covered by the heatset web offset printing and wood furniture coating rules. They also are undergoing USEPA review and will be the subject of separate rulemaking. However, based on the analysis discussed in the proposal TSDs and as confirmed recently by the 1987 air quality data (see 1988 TSDs), USEPA continues to believe that even with these recent rule adoptions the modeling demonstration of attainment is no longer reliable and the current Illinois plan will not produce attainment even by a fixed date shortly after 1987.

8. Comment

The USEPA proposal to disapprove the 1982 SIP on the basis of failure to achieve Reasonable Further Progress (RFP) is arbitrary and capricious. On October 2, 1986, Illinois submitted to USEPA an RFP report for 1985 which demonstrated that Illinois is meeting the RFP requirements of Section 172 of the Act. In addition, Illinois has recently, on September 28, 1987, submitted its RFP report for 1986, which demonstrates that Illinois continues to make RFP.

USEPA has taken no action to approve or disapprove the RFP reports. Further, there is no analysis whatever of the 1985 Illinois RFP report in the July 14, 1987 notice of proposed rulemaking or in the TSDs supporting the

rulemaking. There is no basis for disapproving the RFP portion of the SIP.

Response

The USEPA agrees that the TSDs for the July 14, 1987, proposed rulemaking did not address RFP. USEPA also agrees that Illinois has submitted air quality and emissions reports for 1985 and 1986 demonstrating that annual incremental emissions reductions have been such that VOC emissions remain below the levels indicated in the SIP as reflecting linear decreases between the base year (1979) levels and the 1987 demonstrated attainment levels. However, reports indicate that the 1986 VOC emissions in the Chicago area were above the 1986 levels projected in the SIP.

The RFP reports imply that the Chicago area is complying with the Act's definition of RFP. At issue, however, is the RACT requirement of section 172(b)(3). Section 172(b)(3) states that the adoption, at a minimum, of RACT is required to assure reasonable further progress. Since the required RACT measures have not been fully adopted for the Chicago area, one can question whether or not RFP is being achieved in the area. Further, continued violations of the ozone NAAQS have undermined the underlying attainment demonstrations on which the RFP analysis is based. While further progress in emission reductions is being recorded, ozone data indicate that the Chicago area is not close to attainment and will not be close in the near term even with full RACT implementation; thus reasonable further progress as defined in section 171(1) of the Act has not occurred.¹ It should be noted that the Clean Air Act does not specifically require USEPA to approve or disapprove RFP reports; they are required to provide USEPA with information on whether the State is adequately carrying out the SIP.

9. Comment

USEPA's TSD cannot have been the technical basis for the decision to disapprove the Illinois Ozone SIP and is inconsistent with USEPA's own requirements. USEPA consistently stated to the IEPA from 1984 through 1986 that the 46 percent emission reduction requirement was sufficient for

¹ Section 171(1) of the Act defines reasonable further progress as follows: The term "reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval and promulgation of plan provisions under this part and section 110(a)(2)(I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a).

attainment of the ozone standard in the Chicago area. The USEPA had accepted IEPA's 1984 technical demonstration of the 46 percent VOC emission reduction requirements as being consistent with USEPA procedures and requirements. USEPA advised IEPA that in February 1987 the Administration decided to disapprove Illinois SIP. This reversal occurred prior to the drafting of the technical support document which is the proposed basis of this disapproval. It is questionable whether a TSD can be a technical basis for a decision already made.

USEPA's July 14th proposal represents a major reversal of USEPA policy on the standard of approvability of ozone SIPs. The USEPA does not give the rationale for such a policy reversal. Such a rationale is a legal prerequisite for such a policy reversal.

Response

USEPA agrees that it informed the IEPA during the 1984-1986 period that a 46 percent VOC emission reduction for the Chicago area was correct given USEPA's ozone modeling guidance. Given the available data at the time, this was a correct conclusion. The disapproval of Illinois' SIP, based on current data, however, is not a reversal of policy. It has always been USEPA's policy to use all available data when reviewing SIPs and other submittals. The current, 1984 through 1986, ozone data, coupled with the SIP's VOC emission projections indicate that the calculated allowable VOC emission rates are not nearly low enough to achieve the ozone standard in the Chicago area. It would not be logical to approve a 46 percent emission reduction requirement as adequate for Illinois when subsequently obtained data demonstrate that this emission reduction is inadequate to demonstrate attainment of the ozone NAAQS. Numerous technical support documents have been prepared in support of USEPA's proposed action on the Illinois Ozone SIP. Each provided an analysis of some portion of the State's plan. While one document may have been prepared after February 1987, other documents highlighting the strengths and weaknesses of the Illinois plan were available prior to February 1987.

10. Comment

An assessment of the TSDs by the IEPA indicates the following: (1) The air quality evaluation was performed in a manner totally inconsistent with USEPA's own analysis requirements (this is so stated in the TSD); (2) USEPA has ignored factors necessary to perform

a proper analysis; (3) the re-evaluation of the required SIP reduction level was based on methods that are not a part of the USEPA review procedures or Act requirements; and (4) USEPA's statement that Illinois is not meeting RFP is based on a method of analysis which is inconsistent with USEPA's own definition of RFP. Had the IEPA submitted to USEPA an analysis like that contained in the TSDs, it would be rejected by USEPA as technically inadequate. Clearly the TSDs do not follow EKMA modeling procedures established by USEPA. A TSD, in fact, points out the shortcomings by indicating:

It is important to note certain cautions in using concentration data alone to approximate control requirements. Control requirements can be significantly affected by other variables, such as HC/NO_x ratio, ozone transport, and mixing height rise, so that comparability of concentrations does not guarantee comparability of control requirements.

The TSD fails to account for variations between 1979 and 1984 in source emissions in the source mix in Illinois. One of the key input parameters to the EKMA model is the variation in the hourly emission density that the urban plume experiences as it moves from the urban core to the design site. The emission density used in the 1982 SIP was appropriate for a 1979 base year. The emission density for 1984 would be much smaller than those used originally. USEPA's failure to account for these differences undermines the validity of its entire analysis and points out the inadequacy of the USEPA analytical method under in the TSD.

No modeling was done to support USEPA's proposed rulemaking. This is especially arbitrary and unacceptable in light of the very significant use to which the ozone data are put, i.e., the disapproval of the entire ozone SIP for the Chicago area. Clearly it is arbitrary for USEPA to use an analysis for SIP disapproval when USEPA would itself disapprove the use of such an analysis in the preparation of a SIP.

The TSD states that " * * * the necessary input data for EKMA or for any other suitable model are not available for the relevant days for 1984 and 1986." All the data are in fact available from State and Federal sources. USEPA chose to ignore these data, and instead produced a new ozone air quality analysis based on incomplete data and unacceptable modeling procedures.

"Reasonable further progress" is defined in section 171(1) of the Act as: annual incremental reductions in emissions of the applicable pollutant (including

substantial reductions in early years following approval and promulgation of plan provisions under this part and Section 110(a)(2)(I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in Section 172(a).

USEPA's long-standing guidance on approval of SIP revisions includes the following statement (43 FR 21675, May 19, 1978):

Reasonable further progress will be determined for each area by dividing the total emission reduction required to attain the applicable standard by the number of years between 1979 and the date projected for attainment (not later than 1987). This is represented graphically by a straight line drawn from the emissions inventory submitted in 1979 to the allowable emissions on the attainment date.

In its TSD, USEPA has departed from the definition of RFP in the Act and from its own guidance and instead has used a comparison of current air quality (1984-1986) with air quality from the design period (1979-1981).

Response

It is agreed that USEPA used an analysis technique deviating from ozone modeling guidance published by USEPA. It is also agreed that USEPA's analysis, as discussed in an April 14, 1987, TSD, is associated with a significant amount of uncertainty. This is openly admitted in the April 14, 1987, TSD.

USEPA disagrees that the approach taken in the April 14, 1987, TSD is without technical merit and invalid. At the time the USEPA developed the TSDs to support the most recent proposed rulemaking, it legitimately lacked the input data needed to run the city-specific Empirical Kinetics Modeling Approach (EKMA). Nonetheless, as stated above, USEPA's policy is to use all available data when evaluating submittals. The USEPA did have current (1984-1986) air quality data as well as data on the status of VOC emission control rule adoption and RFP as supplied by the State. USEPA believes it is justified in using these available data to evaluate the SIP's demonstrations of attainment. The USEPA believes the approach taken, although associated with uncertainties, was sufficiently conservative to support the conclusion drawn.

The State argues that the USEPA ignored the post-1979 decrease in VOC emission densities, which it believes to be a crucial input for the city-specific EKMA. USEPA disagrees with this conclusion. Emission densities are not input directly into city-specific EKMA.

They are used to calculate post-8 a.m. emission fractions, which are directly used in the modeling. The emission fractions represent the relative contributions of the downwind (relative to the urban core) emissions to the ozone precursor mixture. As areawide VOC emission densities decrease through the implementation of VOC emission controls, the emission fractions may change little. The emission fractions would only change significantly if VOC emission controls or VOC source growth occurred nonuniformly on a spatial basis in the ozone generation area (demonstration area). USEPA has no reason to believe this has happened. The State has not provided data to prove otherwise.

With regard to RFP, it must be noted from section 171(1) of the Act that RFP occurs if the annual emission reduction is such that in the judgment of the Administrator, the standard will be attained by the statutory deadline. The 1984-1986 data (as confirmed by the 1987 data) make it clear that the Illinois SIP, even as modified by recent RACT submittals, will not achieve ozone standard attainment by December 31, 1987, or even shortly thereafter. Thus, it is appropriate for USEPA to question the RFP for the Chicago area. In addition, as noted above, section 172(b)(3) of the Act states that SIPs must achieve RFP by requiring RACT for all applicable sources. Since Illinois is significantly behind schedule for RACT regulation adoption and implementation, the State has jeopardized RFP for the Chicago area. USEPA does agree that the State is meeting the RFP criteria specified in 43 FR 21675 (May 19, 1978). The VOC emissions have remained below the previously determined straight line emission reduction levels. What is at question here are the correct VOC emission levels needed to attain the ozone standard by the statutory date and the correct straight line VOC emission reduction rate. If the emissions attainment levels have been overestimated, it is likely that current VOC emissions would be above the correct straight line reduction levels, thereby violating the RFP requirements of 43 FR 21675.

As a final note on assessing the likelihood of the modeled emission reduction requirements to attain the ozone standard, one can look at the available ozone and emissions data in a slightly different manner. The 1985 RFP report for Illinois shows a 34.5 percent VOC emissions drop during the 1979-1985 period relative to the 1979 base level for the Chicago area. This compares to a 1.1 percent drop in the

ozone design value (fourth highest concentration) between the 1979-1981 period and the 1984-1986 period at the Racine, Wisconsin, site and to an actual increase in the ozone design value from 0.143 ppm to 0.146 ppm over the same periods for the Waukegan, Illinois, site.

Clearly ozone concentration reductions downwind of Chicago are not as sensitive to VOC emission reductions in the Chicago area as anticipated by the Illinois SIP. If we assume, as Illinois does, that the majority of the expected VOC emission reductions has already occurred in the Chicago area, the fact that in the same period there has been only a small positive impact (or negative impact in the case of Waukegan ozone concentrations) toward attaining the ozone standard downwind of Chicago, shows that the full implementation of the SIP is unlikely to result in the attainment of the ozone standard by the deadline or any other fixed, near-term date. Moreover, USEPA does not believe that shortfalls in the necessary emission reductions in Indiana could account for all the margin of ozone violations downwind of Chicago.

11. Comment

In the July 14, 1987 notice of proposed rulemaking, USEPA proposed to disapprove the 1982 SIP on the basis of its conclusion that the SIP does not persuasively demonstrate attainment of the ozone standard by December 31, 1987, nor is attainment likely to occur shortly thereafter, and, as a consequence, the SIP does not meet the requirements of Part D of the Act. Disapproval on this basis is contrary to USEPA's policy as stated in its November 2, 1983, announcement of policy (48 FR 50686). In that Notice, USEPA stated that it interpreted the language and legislative history of section 172(a)(1) as requiring SIP's to "provide for attainment in a prospective or planning sense." The State believes that, consistent with this policy, USEPA may not disapprove the 1982 Ozone SIP on the basis of failure to attain the ozone standard by December 31, 1987.

USEPA has, since its August 15, 1984 proposed approval of the Illinois Ozone SIP (49 FR 32601), consistently taken the position that the attainment demonstration contained in the Illinois SIP does provide for attainment of the ozone NAAQS in Illinois and southeastern Wisconsin in a planning sense. USEPA has consistently agreed with Illinois that the VOC emission reduction requirement of 46 percent in northeastern Illinois was sufficient to attain the ozone NAAQS by December 31, 1987. USEPA has stated that the methodology used by Illinois to

calculate the VOC emission reduction requirements was consistent with USEPA modeling guidelines. Finally, USEPA has agreed with Illinois that the regulations proposed by Illinois provide sufficient VOC emission reductions to meet the 46 percent emission reduction target.

The fact that, as the 1987 deadline approaches, the validity of the assumptions contained in the Illinois SIP can be questioned in light of current data, does not, consistent with USEPA's November 2, 1983 policy statement, render Illinois' Ozone SIP disapprovable. Nor does the fact that USEPA has not approved Illinois's SIP place the SIP beyond the scope of the November 2, 1983 policy. For over three years USEPA did not waiver from the position that a 46 percent (Chicago) reduction in emissions was sufficient to achieve attainment in the Chicago area and that the Illinois rules would achieve and surpass the reduction requirements. In this respect, Illinois is in the same situation as 70 other areas in the country, where States following USEPA procedures have underestimated that VOC emission reductions necessary to attain the ozone NAAQS by the end of 1987. USEPA's technical error in selecting and requiring attainment demonstration procedures should not be disapproval of the SIP.

Response

USEPA acknowledges that, from mid-1984 through 1986, the USEPA informed the State that it agreed with the 46 percent VOC emission reduction requirement. This reduction requirement, however, did not pass the test of time. In light of subsequently available information, USEPA can no longer conclude that this emission reduction level is adequate to attain the ozone standard by either December 31, 1987 or any near-term date thereafter. To approve the SIP with the assumption that it will lead to attainment by such a date in the face of contradictory empirical data or that it should be approved because Illinois followed USEPA modeling guidelines using older ozone data can not be technically supported in light of current ozone data.

This view is not inconsistent with the November 2, 1983 policy statement, which held that States with previously approved SIPs should not be sanctioned simply because ozone standard violations were found after an attainment deadline. This policy does not preclude the USEPA from using current data (data collected after the generation of a SIP revision) to judge the ability of a SIP to achieve the NAAQS. USEPA has used similar data in other

SIP actions, such as the proposed disapproval of Ohio's first round 1982 SIPs for Cleveland and Cincinnati, and is being used for other areas covered by proposed rulemaking on July 14, 1987. Moreover, USEPA proposed to conclude, and confirms today, that the Illinois SIP, even if fully adopted and implemented, will not produce attainment of the ozone standard even a few years from now. Thus, USEPA is judging the Illinois plan by applying the type of prospective test discussed in the November 1983 policy. USEPA cannot, however, follow Illinois' suggestion that this prospective evaluation ignore recent air quality trends.

12. Comment

In its analysis of the approvability of the Illinois SIP, the USEPA must separate the 1982 SIP requirements (including the requirement for RACT) from the attainment demonstration and look only to the 1982 requirements as the basis for any disapproval of the SIP. Even if the USEPA concludes that Illinois will not attain the ozone NAAQS by the end of 1987, this is not a proper basis to disapprove the Illinois SIP as not meeting the requirements of Part D of the Act.

Response

For the reasons described in USEPA's proposed disapproval and the General Preamble of July 14, 1987, the Agency believes that it can approve a Part D SIP for ozone only if the plan contains a persuasive demonstration that the measures in the plan will produce attainment by the end of 1987 or a fixed near-term date thereafter. Thus, USEPA has not limited its review to whether the Illinois plan shows attainment by the end of 1987. Moreover, in analyzing whether the Illinois' plan meets this test, USEPA is not limited to evaluating whether the State has adopted all of the RACT requirements identified as necessary components of 1982 plans generally. Rather, the Agency must perform a more careful scrutiny of whether the State's demonstration of attainment is persuasive in light of all relevant facts available now, including both adoption of RACT measures and recent air quality data. As explained in the proposal and elsewhere in today's notice, USEPA has rationally concluded from recent air quality data that, despite the State's recent adoption of RACT measures called for in 1982, the plan does not persuasively show that attainment will occur by a fixed near-term date after 1987.

13. Comment.

The USEPA has stated in its July 14, 1987 notice of proposed rulemaking that its proposal to disapprove the Illinois SIP is based in part on a failure to adequately demonstrate attainment of the NAAQS by "any fixed, near-term date." This language presents a complex change in the standards for approval of a SIP. In fact, demonstration of attainment by any fixed, near-term date is a new standard, the terms of which are undefined and were unknown to the States at the time they had to do the work for any such demonstration. Such a standard would appear, in effect, to require an entirely new modeling exercise and presents a plethora of unanswered questions and issues associated with such an exercise: the determination of an appropriate base year; the requirements for a new emissions inventory; and the potential reevaluation of numerous other parameters such as the ozone design value and the design site. No State has carried out such a modeling exercise, nor has such an exercise ever been previously suggested by USEPA or required as necessary for an approvable 1982 SIP.

Because States have relied on the existing modeling standards, and because SIP work and any such showing of attainment takes a considerable amount of time if properly done, a belated new standard is an arbitrary standard, in part because the new standard causes a moving target. It would be inappropriate for USEPA to disapprove the 1982 Illinois Ozone SIP for failure to meet an emissions reduction requirement that was properly arrived at through the application of USEPA approved methodology and which USEPA, for the last three years, has agreed is approvable. USEPA's failure to approve it when it was legally required to do so does not justify a later reversal by USEPA.

Response

The "fixed, near-term date" concept does not impose any new standards or requirements on the State of Illinois. It is merely an indication that, even if a SIP revision fails to demonstrate compliance by December 31, 1987, USEPA might nonetheless approve the revision if USEPA believes that it will result in attainment by some "fixed, near-term date."

This reflects USEPA's policy of November 3, 1983, in which the Agency stated its intent to look at the SIP's ability to produce attainment prospectively, rather than by an elapsed statutory date. The General Preamble of

July 14, 1987 explains the basis for insisting that the plan be adequate to show attainment by a fixed date and, beyond that by a fixed date that is consistent with Congress historical notion of short-term plan periods. USEPA discussed this concept further in proposing its Post-1987 nonattainment policy on November 24, 1987 (52 FR 45004).

Rather than refuting the logic of these policies, Illinois effectively endorsed them by commenting that USEPA's focus on the December 31, 1987, statutory date is inconsistent with the Agency's own 1983 policy. The decision to evaluate the Illinois plan for whether it will attain in the near term after 1987 does not, as Illinois asserts, require new modeling, emission inventories or determinations of base years. Rather, as explained in the TSDs and above, USEPA has reached its conclusion that the plan will meet this near-term attainment test by performing a qualitative analysis in light of expected emission trends and air quality data. With regard to the last part of this comment, USEPA does not deny that the State of Illinois properly applied USEPA's ozone modeling guidance in 1984. (It failed to do so before in submitting its original version of the 1982 SIP, which resulted in subsequent delays in final rulemaking on the SIP and numerous modifications of the SIP by the State.) USEPA agrees Illinois properly applied the modeling and demonstration of attainment guidelines in 1984. Before USEPA could complete final rulemaking on the SIP, however, new ozone data became available and delays in the adoption of some RACT rules have occurred. These changed circumstances lead USEPA to conclude that the SIP does not demonstrate attainment of the ozone NAAQS.

14. Comment

USEPA should act to approve the numerous rules, including the vehicle Inspection/Maintenance (I/M) program, which Illinois has submitted as revisions to the Ozone SIP.

Response

USEPA agrees that it should act on these submittals and, as described above, is working on separate rulemaking and technical reviews of them.

15. Comment

USEPA has insisted that Illinois design its Ozone SIP for the Chicago area to control for a design site located in Racine, Wisconsin. (A similar requirement has burdened Indiana.) This requirement imposes a substantially higher overall emission reduction level

on Illinois than would be the case if the design value were located at a site within Illinois. However, USEPA has not imposed such a control requirement on the State of Wisconsin to submit a SIP designed to control for the air quality levels in Racine, and has not required controls in Wisconsin's conditionally approved Ozone SIP based on air quality levels in Racine. This is inconsistent with the Act, which explicitly places "primary" responsibility for nonattainment on the State where the nonattainment area is located (Section 107(a)). A State which contributes to a nonattainment problem in another State is obliged only to not "prevent" attainment in that other State (Section 110(a)(2)(E)). Any reasonable interpretation of these provisions must require, at minimum, a level of control in the State where the nonattainment area exists equal to the level of control required of nearby upwind States. This should hold true unless it is determined that emissions from the nonattainment area State have no effect on that State's nonattainment problem. In this case, no such determination has been made, and requiring increased levels of control from Illinois to address the interstate nonattainment problem, without even requiring a SIP from the State in which the nonattainment exists, is clearly an unreasonable interpretation of the Act provisions.

USEPA has not required controls in the Wisconsin Counties of Kenosha and Racine to be equivalent to those in northeastern Illinois although emissions from both Counties clearly impact the ozone nonattainment in Racine. The percentage reduction requirements that address the nonattainment problem in Racine are substantially less in those counties (34%) than the percentage reduction requirements for Illinois and Indiana (46%). Moreover, the reduction requirements in place in these two Wisconsin counties are designed to address the nonattainment problem in Milwaukee, and not in Racine.

USEPA has not acted consistently in its review of SIPs for interstate ozone nonattainment areas. USEPA has approved or proposes to approve SIPs for the St. Louis and Philadelphia metropolitan areas in which an equal percentage emission reduction was required for the States involved. In the case of St. Louis, both the Missouri SIP and the Illinois SIP called for the same percentage emission reduction; similarly, the same percentage reduction was required of Pennsylvania, New Jersey and Delaware in connection with the city of Philadelphia. On the other hand, this equal percentage reduction

was not required in the New York and Chicago metropolitan areas. Instead, the downwind area in each case was given a lower percentage emission reduction requirement than the rest of the metropolitan area. Southwestern Connecticut was allowed a much lower percentage emission reduction than the rest of the New York metropolitan area—even though the design monitor for the New York metropolitan area is in Connecticut. Similarly, the Kenosha-Racine area of southeast Wisconsin has a lower emission reduction requirement than the Chicago-Gary area of Northeastern Illinois and Northwestern Indiana, even though the design monitor for the Chicago metropolitan area is in Racine.

The proper approach, based on USEPA guidance, was the one used for the St. Louis and Philadelphia areas. From USEPA's guideline for use of city-specified EKMA in preparing ozone SIPs (EPA-450-80-027), the OZIP/EKMA modeling procedures assume a column of well-mixed ozone and precursor laden air originating in the urban core (downtown Chicago), that begins moving at 0800 LCT toward the site of the peak ozone concentration (in the Chicago-Gary-Racine SIP, this is Racine, Wisconsin). The EKMA model assumes the column moves at uniform speed on a straight line path to the site of the peak ozone value and that it arrives at that site at the time of the observed peak condition. Within OZIP, emissions data are used as inputs to the model for each hour after 0800 LCT. County-wide emissions inventories are necessary to develop emissions densities representative of the area over which the column is assumed to pass each hour.

Thus, the emission densities represent the average emissions density "as seen by the column" for each hour between the model simulation start and the time of the measured peak. In the case of Chicago, emissions densities were input to the model for the Illinois counties of Lake and Cook, and the Wisconsin counties of Kenosha and Racine. Figure 3-3 from Page 30 of the EKMA manual previously referenced illustrates this concept.

IEPA followed this procedure in conducting its analysis of the Chicago ozone reduction requirements, including the emissions from Kenosha and Racine Counties, Wisconsin. It is clear from this example and the EKMA procedures, that the design control requirement should apply to the entire area over which the ozone trajectory passes, from the starting urban core site (Chicago) to the site of the peak ozone concentration

(Racine). The design control requirement also applies to portions of the Indiana Counties Lake and Porter and the Illinois Counties Kane, DuPage, Will, and McHenry because emissions from these Counties have an impact on background ozone levels and precursor levels in the urban core due to transport.

A recent new source review permit issued by the State of Wisconsin for an American Motors Corporation plant in Kenosha, Wisconsin, upwind of Racine, illustrates the unjustness of this situation. The permit allows an actual 300-400 ton increase in VOC emissions that will contribute to ozone formation in Racine. Such a permit requires, under Federal law, that offsetting emission reductions be obtained. Wisconsin has allowed this to be done by the use of reductions in Milwaukee. These reductions in Milwaukee are far downwind of Racine, and do not offset the large increase in emissions from Kenosha that affects Racine. The result of Wisconsin's action will be a serious aggravation of the nonattainment problem in Racine.

This arrangement is clearly arbitrary, capricious and contrary to the Act. USEPA has failed to require the measures prerequisite to the disapproval of the Illinois Ozone SIP due to air quality in Wisconsin. Because of USEPA's failure to require Wisconsin to submit SIPs designed to address the ozone air quality problems in Kenosha-Racine, Sheboygan and Manitowoc, Illinois' SIP requirements remain unfairly high. If EPA had acted appropriately, the Wisconsin SIPs would be required to achieve greater reductions throughout Southeast Wisconsin. Under the Act, these failures must be rectified as a prerequisite to any adverse final action on Illinois' SIP based on interstate air quality levels.

The State of Illinois is committed to meet its obligations under the Act, including its obligation pursuant to section 110(a)(2)(E) to refrain from preventing nonattainment in Wisconsin. The Illinois SIP submittal addresses that interstate pollution problem in the manner and to the level which USEPA stated was necessary. However, it would be arbitrary and capricious to disapprove the Illinois SIP without requiring Wisconsin to address the problem first and meet its primary responsibility under the Act. Were USEPA to impose these requirements upon Wisconsin, the air quality concerns regarding Racine might appear very different from the present situation.

Although the Illinois 1982 Ozone and Carbon Monoxide SIP covers both the Chicago and Metro-East St. Louis areas,

each area is independent of the other, the nonattainment circumstances are different, and the attainment demonstrations are different for each area. Consequently, the State believes each should be viewed independently, and separate decisions should be rendered on each.

Response

Based on past data analyses and a general concept of ozone production and transport (relevant supporting documentation is contained in the Region V docket supporting rulemaking on an ozone redesignation request for Kane and DuPage Counties, Illinois), USEPA concludes that the Chicago urban area (including Lake and Porter Counties, Indiana) is the probable ozone precursor source area for the high ozone concentrations observed in Kenosha and Racine Counties, Wisconsin. Similarly, the USEPA concludes that Kenosha and Racine Counties' VOC emissions significantly contribute to high ozone concentrations in and downwind of Milwaukee. USEPA believes that VOC emissions in Racine and Kenosha Counties have little impact on the maximum ozone concentrations observed in Racine. These peak concentrations are observed typically on days with resultant (considering the variation of wind direction during the hours when ozone is formed) winds from the southeast through the southwest. The peak concentrations also are typically observed from mid to late afternoon (3 p.m. to 6 p.m. or later) under conditions of moderate wind speeds (5 to 15 miles per hour). This implies the critical source area is some distance to the south, namely the Chicago urban area. Under these conditions, Racine and Kenosha Counties' VOC emissions would contribute most significantly to peak ozone concentrations in and north of Milwaukee. It is true that, under Section 107(a) of the Act, the State of Wisconsin has a responsibility to assure the attainment of the air quality standards throughout the State. The USEPA, however, believes that attainment of the ozone NAAQS in Kenosha and Racine Counties depends primarily upon appropriate VOC emission reductions in the Chicago urban ozone demonstration area. Failure to adequately reduce VOCs in the Chicago area will prevent attainment of the ozone NAAQS in Kenosha and Racine Counties.

The State of Illinois argues that USEPA has acted arbitrarily in its requirements for various area SIPs. The States of Missouri and Illinois have adopted the same VOC emission

reduction requirement for their respective portions of the St. Louis ozone demonstration area. The States of Pennsylvania, New Jersey, and Delaware have adopted the same VOC emission reduction requirement for their respective portions of the Philadelphia demonstration area. On the other hand, despite the fact that the same design ozone monitoring site is used for both SIP analyses, USEPA has allowed New York and Connecticut to adopt different VOC emission reduction requirements. Likewise, even though the design site for the Chicago Ozone SIP is in Wisconsin, USEPA has allowed Wisconsin to adopt a VOC emission reduction requirement for Racine and Kenosha Counties which differs from the Chicago VOC emission reduction requirement.

USEPA has not applied the policy arbitrarily. The St. Louis ozone demonstration area covers counties in both Missouri and Illinois. The Philadelphia ozone demonstration area contains portions of Pennsylvania, New Jersey, and Delaware. It makes technical sense to accept single VOC emission reduction requirements for these areas. In contrast, at the time New York and Connecticut contained separate uniquely identifiable urban VOC source areas. Meteorology during peak ozone concentrations showed that assigning unique VOC emission reduction requirements to each of the urban source areas comported best with their relative contribution to the problem. Similarly, northeast Illinois and Southeast Wisconsin contain the separate, uniquely identifiable urban source areas of Chicago and Milwaukee. Based on downwind ozone data, these urban areas should have different VOC emission reduction requirements. Based on the consideration of ozone precursor and ozone formation/transport, it was most appropriate to include Kenosha and Racine in the Milwaukee demonstration area because the emissions in these Counties contribute more significantly to ozone concentrations downwind of Milwaukee than to the concentrations monitored in these Counties.²

USEPA acknowledges that the post-8 a.m. emissions fractions from Kenosha and Racine Counties were properly included in the EKMA analysis for Chicago. It is also acknowledged that the inclusion of post-8 a.m. emission fractions for Kenosha and Racine Counties may have affected the calculated Chicago area VOC emission reduction requirement. The commenter, however, fails to discuss the degree of this impact. The relevant question is whether the difference in control requirements (46 percent if the Counties are included in the Chicago demonstration area versus 34 percent if they are included in the Milwaukee demonstration area) will have a significant impact on the ability of the Chicago emissions control strategy to achieve attainment of the ozone standard. The USEPA has seen no evidence that it does, and, therefore, continues to assume the proper emissions control level for Kenosha and Racine Counties is that of the Milwaukee demonstration area.

The commenter argues that the USEPA has failed to require Wisconsin emission control measures prerequisite to the disapproval of the Illinois Ozone SIP due to air quality in Wisconsin. IEPA claims that because of USEPA's failure to require Wisconsin to submit SIPs designed to address the ozone air quality problems in Kenosha, Racine, Sheboygan, and Manitowoc, Illinois' SIP requirements remain unfairly high since, if "corrected," the Wisconsin SIP should require higher VOC emission reductions throughout the southeastern Wisconsin area. Under the Act, Illinois argues, the failures of the Wisconsin SIP must be rectified as a prerequisite to any final action on the Illinois SIP based on interstate air quality levels.

The USEPA disagrees with this argument. Illinois' argument is that we must go back and require more of Wisconsin. As discussed above, USEPA continues to believe that in the Chicago demonstration area emissions of VOCs and oxides of nitrogen from Illinois and Indiana sources are the primary source of the ozone standard exceedances observed in Racine and Kenosha. In light of 1984-1987 air quality data, it is apparent that further reduction in the Chicago area emissions beyond the 46 percent planned in the SIP are needed to eliminate future ozone standard violations at the design sites for the Chicago area (Kenosha and Racine). Any further emission reductions downwind of Racine, in the Milwaukee area, to correct for recently observed ozone standard violations in Sheboygan and Manitowoc will not result in an air

quality improvement upwind in Racine and Kenosha. Finally, unlike Illinois, Wisconsin adopted, or satisfactorily committed to adopt, required emission control measures and applied proper ozone analysis techniques early in the SIP adoption and submittal process, and, thus, received a relatively quick approval of their 1982 Ozone SIP. USEPA recently issued a finding that the 1982 Wisconsin SIP for Milwaukee area is substantially inadequate and therefore must be revised. Nothing in the Act requires that Wisconsin's response to USEPA's call for a SIP revision must precede USEPA's disposition on the pending Illinois Part D plan.

16. Comment

All of the emission control regulations required as part of the SIP, including all of the rules which are RACT requirements, are either adopted in approvable form or are close enough to final approvability that USEPA can proceed to final approval. When that approval occurs, the State of Illinois should be placed in the same position as other States which have met all the requirements of, and submitted all of the control elements needed for, a 1982 Ozone SIP. Should USEPA determine that attainment of the ozone standard will not be achieved by the end of 1987, USEPA should still approve the SIP and act to place the State of Illinois in the same status as other States that have complied with the necessary control requirements for a 1982 SIP but that have not achieved attainment. The imposition of a construction ban is inappropriate and contrary to USEPA's own policy.

Response

Illinois has submitted, for USEPA approval, all of the necessary emission control regulations. USEPA is reviewing these regulations and will take separate rulemaking action on them in the future. USEPA cannot, however, approve the overall Illinois Part D SIP when those rules receive final USEPA approval. Once again, IEPA fails to grasp the very necessary connection between the attainment demonstration and approval of a Part D SIP. As described above, USEPA has rationally concluded that the Illinois SIP, despite recent RACT adoptions, will not produce attainment by the end of 1987 or even shortly thereafter. The Agency therefore has no choice, under the attainment demonstration and RFP requirements of section 172 of the Act, but to disapprove the SIP. IEPA asks to be placed in the same position as those States that already had approved Part D plans

² Recently EPA issued a call for Wisconsin to develop a SIP revision for, among other areas, Kenosha County, and proposed to place that County into the Chicago ozone planning area for purposes of future planning. This was based on new factors (e.g., commuting patterns) that EPA has not traditionally considered in defining ozone planning areas. Even if EPA had initially included Kenosha County in the Chicago demonstration area, however, the increased control burden on that County would not have lightened the control burden on Illinois enough to compensate for the large emission reduction shortfalls that recent air quality shows remain in the Illinois SIP.

which have, based on current data, proved to be inadequate to attain compliance by December 31, 1987. The fundamental distinction between Illinois and those States is that Illinois slipped so far behind schedule in adopting all of the necessary control measures that new data indicating that Illinois will not attain the NAAQS by the deadline became available. The other States had shown based on all data available at the time of their complete SIP submittals that they would attain the NAAQS. For those areas where the demonstration proved inaccurate, USEPA issued SIP calls pursuant to the reasoning of the November 3, 1983 policy cited by Illinois; those notices call for revisions to those areas' SIPs to account for the inaccurate prediction of attainment. Apparently, IEPA believes that the imposition of a construction ban is inappropriate because no such ban is imposed on those areas with approved plans but which failed to attain compliance in fact i.e., those areas issued SIP calls. USEPA concluded in its 1983 policy-making that withdrawing the Agency's previous approval of those plans based on subsequent air quality would be unlawful. The Agency stated that the Act requires the Part D plans be disapproved and bans imposed only if the plans fail to contain a persuasive *prospective* projection of timely attainment. Thus, imposition of the ban in areas with *previously* approved Part D plans simply on the basis of new air quality data would not be consistent with the Act. However, the Act is clear in requiring the imposition of this sanction against Illinois, in that information available when Illinois was still developing its plan and while USEPA was reviewing the plan shows that the plan submittal that just recently became complete is not adequate.

Comment

USEPA's July 14, 1987, proposed rulemaking is silent on the Illinois Carbon Monoxide SIP. USEPA should proceed to complete final rulemaking on Illinois 1982 CO SIP.

Response

USEPA agrees with this comment and will propose rulemaking on the CO SIP including the vehicle inspection and maintenance portion of the SIP in a separate Federal Register notice.

Final Rulemaking Action

After due consideration of the public comments received and the Illinois SIP submittal, USEPA announces final disapproval of the Illinois ozone attainment demonstrations for the Chicago area. This final disapproval is

based on the two plan deficiencies cited in the July 14, 1987 proposed disapproval which remain.

1. The SIP revision did not adequately demonstrate that the Chicago ozone non-attainment area would attain the national ambient air quality standards (NAAQS) by December 31, 1987, or any near term, fixed date thereafter. USEPA based this conclusion on two facts. First, the State was behind schedule in adopting all stationary source control measures. Thus, it is unlikely that Illinois could achieve all the projected emission reductions by December 31, 1987 or even shortly thereafter. Second, air quality data for 1984-1986 showed little or no improvement over the 1979-81 peak levels; that information called into question whether the quantity of emissions reductions that the plan had projected would be achieved by the control measures and would be enough to produce attainment in the near term.

2. Due to delays in adopting certain control measures, the State failed to demonstrate reasonable further progress (RFP) toward attainment of the ozone NAAQS.

Further, as a result of the disapproval, USEPA retains the construction ban as provided for in section 110(a)(2)(I) of the Act on major new stationary sources and major modifications of stationary sources of VOC in the four counties presently designated nonattainment within the Illinois portion of the Chicago ozone nonattainment area, i.e., Cook, DuPage, Kane and Lake Counties.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: September 30, 1988.

Lee M. Thomas,
Administrator.

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.726 is amended by adding paragraph (c) to read as follows:

§ 52.726 Control Strategy—Ozone.

(c) Part D Disapproval—The Administrator finds that Illinois' ozone plan for Cook, Lake, DuPage and Kane Counties, which was required to be submitted by July 1, 1982, does not satisfy all the requirements of Part D, Title I of the Clean Air Act and, thus, is disapproved. No major new stationary source, or major modification of a stationary source, or volatile organic compounds may be constructed in Cook, Lake, DuPage or Kane Counties, unless the construction permit application is complete on or before November 16, 1988. This disapproval does not affect USEPA's approval (or conditional approval) of individual parts of Illinois' ozone plan, and they remain approved.

[FR Doc. 88-23894 Filed 10-14-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 64

[Docket No. FEMA 6811]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction Federal Insurance Administration, (202)

646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations [44 CFR part 59 et. seq.]. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular

community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the

same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 USC 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Putnam, town of, Windham County.	090194	Sept. 2, 1975, Emerg.; Oct. 18, 1988, Reg.; Oct. 18, 1988, Susp.	Oct. 18, 1988	Oct. 18, 1988.
Maine: Jefferson, town of, Lincoln County.	230085	July 2, 1975, Emerg.; Oct. 18, 1988, Reg.; Oct. 18, 1988, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Greene, township of, Pike County.	421965	Aug. 6, 1975, Emerg.; Oct. 18, 1988, Reg.; Oct. 18, 1988, Susp.	.....do	Do.
Midland, borough of, Beaver County.	422321	Feb. 18, 1976, Emerg.; Oct. 18, 1988, Reg.; Oct. 18, 1988, Susp.	.....do	Do.
Versailles, borough of, Allegheny County.	420081	June 11, 1976, Emerg.; Oct. 18, 1988, Reg.; Oct. 18, 1988, Susp.	.....do	Do.
Region V				
Illinois:				
Maywood, village of, Cook County.	170124	July 22, 1975, Emerg.; Aug. 11, 1978, Reg.; Oct. 18, 1988, Susp.	.....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
River Forest, village of, Cook County,	170151	July 29, 1974, Emerg.; Aug. 11, 1978, Reg.; Oct. 18, 1988, Susp.	.....do	Do.
Region VI				
Texas: Hood County, Unincorporated areas...	480356	May 11, 1979, Emerg.; Oct. 18, 1988, Reg.; Oct. 18, 1988, Susp.	.....do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: October 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-23858 Filed 10-14-88; 8:45 am]

BILLING CODE 6718-21-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Docket No. 38904]

Elimination of Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to adopt revised rules regarding the decision on March 31, 1987 (52 FR 10382, published April 1, 1987), in which the Commission decided to (1) reduce quarterly report Form QFR and annual report Form M; (2) subject only Class I motor carriers to periodic reporting; and (3) not prescribe the Uniform System of Accounts (USOA) (49 CFR 1207).

Subsequent to that decision, Petitioners requested a stay of the decision and requested the Commission to reopen and reconsider the decision. Petitioners argued that a degree of increased reporting would be beneficial to the industry, that all Class II motor carriers should be required to report, and that the USOA be prescribed. On May 4, 1987, the Commission decided to stay the May 1, 1987 effective date of the decision.

The Commission has decided to (1) require annual reporting from Class I and Class II motor carriers; (2) retain the USOA; (3) adopt a condensed annual report form with optional expense matrix; (4) adopt a three-page quarterly report form; and (5) incorporate separate household goods carrier data in both annual and quarterly report forms.

These provisions will provide the minimum uniform data for financial and regulatory monitoring of the industry.

EFFECTIVE DATE: The new rules are effective on November 16, 1988.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 275-7510, [TDD for Hearing Impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

This action will not affect significantly either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

It is estimated that an average of 33 annual and quarterly reporting burden hours per year are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintain the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission and the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

49 CFR Part 1207

Motor carriers, Uniform system of accounts.

49 CFR Part 1249

Motor carriers, Reporting and recordkeeping requirements.

Decided: October 7, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Phillips commented with a separate expression. Chairman Gradison dissented in part with a separate expression.

Noreta R. McGee,
Secretary.

Parts 1207 and 1249 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

1. The authority citation for Part 1207 continues to read as follows:

Authority: 49 U.S.C. 10321, 10751, 11142 and 11145; and U.S.C. 553.

§ 1207.1 [Removed]

2. Section 1207.1, "Uniform System of Accounts for common and contract motor carriers of property not prescribed," is removed.

§ 1207.2 [Redesignated as § 1207.1]

3. Section 1207.2, "Uniform System of Accounts for common and contract motor carriers of property" is redesignated as § 1207.1.

PART 1249—REPORTS OF MOTOR CARRIERS

4. The authority citation for Part 1249 continues to read as follows:

Authority: 49 U.S.C. 11142, and 11145 and 5 U.S.C. 553.

5. Section 1249.1 is revised to read as follows:

§ 1249.1 Annual and quarterly reports of motor carriers of property, motor carriers of household goods, and dual authority carriers.

(a) *Annual Report Form M.* All Class I and Class II common and contract motor carriers of property, including Class I and Class II household goods and dual authority motor carriers, shall file Motor Carrier Annual Report Form M. Class III motor carriers of property shall be

exempt from filing Form M. For classification criteria, See § 1249.2.

(b) *Quarterly Report Form QFR.* All Class I common motor carriers of property and Class I household goods motor carriers, shall complete and file motor carrier Quarterly Report Form QFR (Form QFR). All Class II, Instruction 27, motor carriers shall complete and file motor carrier Quarterly Report Form QFR (Form QFR). For definition of Instruction 27, See CFR 1249, Instruction 27.

[FR Doc. 88-23866 Filed 10-14-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930 and 1944

Section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations for section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations. This action is taken to incorporate changes mandated by the Housing and Community Development Act of 1987. The intended effect of this action is to permit the initial operating reserve to be in the form of an irrevocable letter of credit and to permit packaging fees to be part of development cost for nonprofit applicants.

DATE: Comments must be received on or before December 16, 1988.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives & Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen King, Senior Loan Officer, Multi-Family Housing Processing Division,

USDA, Farmers Home Administration, Room 5331, South Agriculture Building, Washington, DC 20250, telephone 202-382-1620.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action.

Discussion of Changes

The Housing and Community Development Act of 1987 states that section 515 of the Housing Act of 1949 be amended to allow the Secretary to accept the initial operating reserve furnished by the applicant in the form of an irrevocable letter of credit. The Act also requires that packaging fees for public and private nonprofit applicant organizations be included as an authorized development cost.

Subpart E of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations is being amended to implement these required changes.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an environmental impact statement is required.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant Programs—Housing and community development, Loan programs—House and community development, Low and moderate housing—Rental, reporting requirements

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, and Rural housing

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 223; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B of Subpart C of Part 1930 is amended by revising the introductory text of paragraph XIII B. 2. a. (1) to read as follows

Exhibit B of Subpart C—Multiple Housing Management handbook

XIII. Accounting and Reporting Requirements and Financial Management Analysis

- B. * * *
- 2. * * *
- a. * * *

(1) *Initial Operating Capital.* The initial operating capital may be in the form of cash, an irrevocable letter of credit, or in a combination of the two as set forth in § 1944.211 (a)(6) of Subpart E of Part 1944 of this chapter. The borrower will have

deposited any initial operating cash into this temporary bookkeeping account by the time of the FmHA loan closing or when interim financing funds are obtained or the start of construction, whichever occurs first. The initial operating cash will be deposited in the General Operating Account. Any letters of credit will be supplied by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. Letters of credit will be maintained in the casefile. They must be renewed as needed so that a current letter of credit is always in effect. If a borrower does not renew the letter of credit they will be required to deposit an equivalent amount of cash into the General Operating Account before the Letter of Credit expires. If a borrower supplied all or part of the initial operating capital in the form of a letter of credit and the borrower makes cash deposits into the General Operating Account for operating purposes the borrower can provide the District Office with a new letter of credit in a smaller amount with evidence of the cash deposit. The new letter of credit and the cash deposit must total the required initial operating capital. The old letter of credit will be returned to the borrower. After 24 months from the date occupancy started, but before five full borrower fiscal years of operation (60 months), the State Director may authorize the borrower to make a onetime withdrawal of the initial operating capital, or a part of it. The withdrawal can be in the form of cash, release or reduction in the letter of credit, or a combination of both. The total withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

3. Exhibit B-3 of Subpart C of Part 1930 is amended by revising the introductory text of paragraph V. A. to read as follows:

Exhibit B-3 of Subpart C—Management Agreement for FmHA Multiple Family Housing Projects

V. Project Accounts.

A. General Operating Account.

This account records all project income and disbursements. Excess project cash held in this account may be combined with other project funds described below in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for individual project accounts. This will usually be a checking account which must be maintained in a financial institution insured by the Federal Government. The Owner will have deposited any cash portion of the required initial operating capital into this account by the time of loan closing or when interim funds were obtained, whichever occurs first. The initial operating cash will be recorded in the General Operating Account. After 24 months from the date occupancy started, but before five full borrower fiscal years (60 months) of project operation, the FmHA State Director may authorize the owner to make a onetime withdrawal of the initial operating capital, or a part of it. The withdrawal can be in the form of cash, release or reduction in the letter

of credit, or combination of both. The total withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that: The loan was closed on or after October 27, 1980; the loan agreement or resolution signed by the borrower is Form FmHA 1944-33 "Loan Agreement", 1944-34 "Loan Agreement", or 1944-35 "Loan Resolution"; the project has achieved at least a 95% occupancy level at the time of the withdrawal request; the withdrawal will not affect the financial integrity of the project; the owner must demonstrate that all prudent maintenance is being planned and performed and payment of necessary project expenses are not being deferred; the State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next operation year; and the State Director has reviewed and approved any required borrower reports before the initial operating capital is withdrawn.

PART 1944—HOUSING

4. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

5. Section 1944.205 is amended by redesignating paragraphs (o) through (ee) as (p) through (ff) and by adding new paragraph (o) to read as follows:

§ 1944.205 Definitions.

(o) *Initial operating capital.* Cash or a pledge, in the form of an irrevocable letter of credit, to provide cash to pay for costs such as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms and other initial operating expenses. The initial operating capital will be at least 2 percent of the total development cost of the project.

6. Section 1944.211 is amended by revising paragraph (a)(6) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(6) Have or be able to obtain the initial operating capital and other assets needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) If initial operating expenses are expected to be greater than 2 percent of the development cost, the initial operating capital will be increased accordingly.

(ii) Initial operating capital can be provided in cash, in the form of an irrevocable letter of credit or in a combination of the two. Since some start-up capital is normally needed, it is expected that most applicants will elect a combination of cash and a letter of credit.

(A) Any funds provided in cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution prior to the start of construction or loan closing (whichever is first) and will be used for authorized purposes only.

(B) If supplied as an irrevocable letter of credit it must:

(1) Be from a Federally Insured Financial Entity;

(2) Be addressed to the project owner/entity and specifically refer to the proposed project;

(3) Be for a term of at least one year. The letter of credit would need to be renewed annually, prior to expiration, to cover the 2 to 5 year period of enforcement as required by Subpart C of Part 1930 of this chapter.

(4) Be provided prior to the start of construction or loan closing (whichever is first).

(C) If provided as a combination:

(1) The cash and letter of credit, added together, must equal the required initial operating capital;

(2) They must be provided prior to the start of construction or loan closing (whichever is first);

(3) The cash portion will be handled according to § 1944.211(a)(6)(ii)(A) of this subpart and the letter of credit must meet all requirements of § 1944.211(a)(6)(ii)(B) of this subpart.

7. Section 1944.212 is amended by revising paragraph (j) to read as follows:

§ 1944.212 Loan purposes.

(j) Pay for qualified assistance obtained by a nonprofit organization for its formation or incorporation and for the development and packaging of its loan docket and to pay legal, technical and professional fees incurred in the formation or incorporation of the applicant entity. These charges must be reasonable and typical for the area considering the size and purpose of the loan.

8. Section 1944.235 is amended by revising paragraph (a)(3) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) * * *

(3) Unless the applicant is a nonprofit organization, the applicant will furnish evidence that the initial operating capital is in place. If cash is being used, evidence of deposit in the general operating account will be furnished. If an irrevocable letter of credit is being used, it will be maintained in the District Office with the casefile.

§ 1944.237 [Amended]

9. In § 1944.237, paragraph (c)(2) is amended by adding the following sentence at the end of the paragraph: "The 2 percent can be in the form of cash or an irrevocable letter of credit as described in § 1944.211(a)(6) of this subpart."

Exhibit A-6 [Amended]

10. In Exhibit A-6 of Subpart E, the introductory text of paragraph I.A. is amended by adding the following sentence at the end of the paragraph: "The initial operating capital requirement may be fulfilled by contributing cash or by providing an irrevocable letter of credit."

Dated: September 6, 1988.

Vance L. Clark,
Administrator, Farmers Home
Administration.

[FR Doc. 88-23916 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-50]

Charles Young; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of petition for rulemaking; correction.

SUMMARY: This document clarifies a portion of the notice of receipt for a petition for rulemaking filed by Charles Young and docketed as PRM-50-50. The notice of receipt for this petition was published August 26, 1988 (53 FR 32624). This notice provides additional information in support of the petitioner's original intent.

FOR FURTHER INFORMATION CONTACT: John D. Phillips, Acting Chief, Regulatory

Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-492-3783.

In the notice of receipt for PRM-50-50 published on August 26, 1988 (53 FR 32624), under the heading, "II. Grounds for the Petition," remove the first two sentences and insert the following sentences in their place:

The petitioner states that not following technical specifications in an emergency could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner states that Federal Regulations require a nuclear plant safety system to pump water into a nuclear reactor as long as the abnormal condition which activated the system persists; but, that Commonwealth Edison's Policy permits operators to turn off water being pumped into a nuclear reactor during an emergency before the safety system has finished its job. The petitioner notes that turning off water being pumped into a nuclear reactor during an emergency can cause a nuclear fuel meltdown, release of highly radioactive fission products, and exposure of plant personnel and people nearby to hazardous radiation. The petitioner offers that during a Proceeding before the Illinois Commerce Commission on September 15, 1987, Commonwealth Edison's attorney cited 10 CFR 50.54, paragraphs (x) and (y) as authority for their policy. The petitioner states that this policy applies to all of Commonwealth Edison's nuclear power plants; therefore, the petitioner concludes that Commonwealth Edison risks an accident such as the accident at Three Mile Island Unit 2 at twelve nuclear power plants.

Dated at Rockville, Maryland, this 11th day of October 1988.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 88-23890 Filed 10-14-88; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 509 and 512

[No. 88-1049]

Rules of Practice and Procedure

Date: September 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing revisions to 12 CFR Parts 509 and 512, respectively, its regulations governing the rules of practice and procedure in adjudicatory proceedings and investigative and formal examination proceedings. The proposed revisions to Part 509 would streamline prehearing procedures with a view toward expediting the proceedings, clarify the authority of Administrative Law Judges appointed to conduct the proceedings, and add several new provisions. The proposed revisions to Part 512 would be of a clarifying and technical nature and would update several provisions of the rules relating to the conduct of investigative and formal examination proceedings.

DATE: Comments must be received by December 16, 1988.

ADDRESS: Send comments to: Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office at 801 17th Street, NW., Washington, DC, 20552.

FOR FURTHER INFORMATION CONTACT: Gary A. Gegenheimer, Senior Attorney, Office of Enforcement, (202) 653-2612; or Rosemary Stewart, Director, Office of Enforcement, (202) 653-2626.

SUPPLEMENTARY INFORMATION: The Board is considering certain revisions to its Rules of Practice and Procedure that govern adjudicatory proceedings authorized by the National Housing Act of 1934, 12 U.S.C. 1730 ("NHA"), the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 ("HOLA"), the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) ("Control Act"), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a (the "Holding Company Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). These proposed revisions would, *inter alia*, revise prehearing procedures with a view toward streamlining adjudicatory proceedings and eliminating the need for unnecessary proof, clarify the authority of Administrative Law Judges designated to conduct such proceedings, clarify when depositions may be taken in connection with adjudicatory proceedings, and institute a new procedure for summary disposition where no genuine issues of material fact exist.

In addition, the Board is proposing certain technical amendments to its Rules for Investigative Proceedings and Formal Examination Proceedings.

I. Proposed Revisions To Part 509

Part 509 was originally promulgated in 1967, following the enactment of the Financial Institutions Supervisory Act of 1966, Pub. L. No. 89-695, 80 Stat. 1028 ("FISA"). 32 FR 6764 (May 3, 1967); 32 FR 8889 (June 22, 1967). The FISA granted the Board and its fellow financial regulatory agencies the authority to issue cease-and-desist orders against management officials who were found to have engaged in conduct that provided the grounds for such actions as set out in the FISA.

Subsequently, following the enactment of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, 92 Stat. 3641, which amended the Board's enforcement authority in several significant ways, Part 509 was amended in 1979 with minor revisions. 44 FR 62479 (October 31, 1979). Thus, with minor changes, the rules have remained essentially unchanged since 1967.

In the 20 years that Part 509 has been in existence, the number and complexity of the adjudicatory proceedings initiated by the Board have increased significantly. Particularly since the enactment of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469, enforcement actions involving complicated loan and investment transactions, often involving tens of millions of dollars, have become the rule rather than the exception. At the same time, conversions from mutual to stock form of ownership, increasing activities of insured institutions in the securities area, and heightened interest in acquisitions of control of insured institutions have increased the possibilities for adjudicatory proceedings under the Control and the Holding Company Acts, as well as the provisions of the federal securities laws to which insured institutions and related persons are subject. While, as in the past, most adjudicatory proceedings are settled prior to the hearing stage, the number of litigated proceedings is steadily increasing. Because of the increasing complexity of most of these cases, the Board believes that it is appropriate to revise Part 509 to reflect the altered character of the cases and to streamline and clarify the procedures as much as possible. The Board notes that the Federal Deposit Insurance Corporation ("FDIC"), which has similar enforcement authority with respect to federally insured banks, recently proposed extensive revisions to its own rules of practice and procedure. See 53 FR 5392 (Feb. 24, 1988). Many of the revisions being proposed by the Board today closely resemble the rules

proposed by the FDIC. The principal changes in the existing Rules that are being proposed are summarized below. The Board specifically requests comments on the proposed rules, including suggestions for provisions that would be less burdensome.

A. Subpart A: General

1. Appointment of Administrative Law Judges

Unlike the majority of federal departments and agencies that conduct adjudicatory proceedings, the federal banking regulatory agencies (including the Board) do not have their own administrative law judges on their staffs. As a result, the Board must request that other agencies "loan" the services of their administrative law judges to conduct adjudicatory proceedings on a case-by-case basis. The request is made to the Office of Personnel Management, which then selects an administrative law judge from a "pool" of available candidates. Proposed § 509.3 would codify the existing procedure. In this regard, the current definition of "presiding officer," which means alternatively the Board or any person actually conducting a proceeding, would be eliminated. Instead, the Board would specifically define the term "administrative law judge" to mean an administrative law judge appointed or detailed as specified in Title 5 of the United States Code to conduct an adjudicatory proceeding. The term would refer to the Board where an administrative law judge has not yet been appointed or where his services have ended or he is otherwise unavailable.

2. Appearance and Practice in Adjudicatory Proceedings

Proposed § 509.5, concerning appearance and practice in adjudicatory proceedings, would make several changes to current § 509.3. First, any appearance by an attorney or duly authorized official of a corporation, partnership, or government unit would be subject to the provisions governing conflicts of interest, as well as those concerning suspension and debarment (Part 513). Second, proposed § 509.5(a)(2) would provide that any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and who has not been suspended or debarred from practice by the bar of any such political entity or before the Board in accordance with the provisions of Part 513, and has not been excluded or suspended from a particular proceeding pursuant to

proposed § 509.5(c) may represent parties in that proceeding. This represents a change from the present rule in this area in that under the Board's proposal, an attorney who has been suspended or debarred in any State or other political entity listed in the proposal would be precluded from representing parties in an adjudicatory proceeding irrespective of the possibility that he may be a member in good standing of some other bar. Under the Board's current rule, § 509.3, an attorney who is a member in good standing of the bar of one jurisdiction but who has been suspended or disbarred by another jurisdiction could nevertheless represent parties in adjudicatory proceedings. The Board, however, does not believe that this should be permitted and is therefore proposing the change set forth today. Proposed § 509.5 would also provide for representation of non-parties appearing to give testimony at depositions by their own attorneys.

3. Good Faith Certification

Rule 11 of the Federal Rules of Civil Procedure provides the basis for proposed § 509.6, the "good faith certification." This is a new proposal. Like Rule 11, the proposed rule would require that every written presentation made by a party after the issuance of the notice must be signed by that party or the attorney for the party. A signature on a post-notice written presentation would constitute a certification that the attorney or party has read the written presentation, that the presentation is well grounded in fact and warranted by existing law or a good faith argument for extending or modifying existing law, and that it is not interposed for any improper purpose to the best of that party's or attorney's knowledge, information, and belief formed after reasonable inquiry. Failure to sign a written presentation would result in its being stricken from the record unless it is signed promptly after the signature omission is brought to the attention of the attorney or party. The making of an oral motion or argument would constitute the same certification as the signing of a written presentation. The Administrative Law Judge or the Board would have the authority to impose sanctions under Part 509 or under Part 513 upon the attorney, or upon the party, or both, for violations of the good faith certification requirements.

4. Ex Parte Communications

Proposed § 509.7 is new, but it embodies existing law in the area of ex parte communications. It would define, generally prohibit, and provide for

sanctions in the event of, improper ex parte communications. Paragraph (a) of the rule would define an "ex parte communication" as any material oral or written communication concerning the merits of a proceeding, which takes place between a party, his counsel, or any other person interested in the proceeding, and the Administrative Law Judge handling that proceeding, the Board, any member of the Board, or any person assisting or advising the Board concerning the preparation of a decision with respect to the proceeding and which was neither on the record nor on reasonable notice to all parties. It would prohibit ex parte communications from the time the notice is served (or, if the individual responsible for the communication learns that the notice has been approved by the Board, from the time that information is acquired) until the Board serves its final decision. Paragraph (b) would prohibit the Administrative Law Judge from consulting with anyone within the Board on the merits of an adjudicatory proceeding except on reasonable notice and opportunity for all parties to participate, and would provide that the Administrative Law Judge shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Board engaged in the performance of investigatory or adjudicatory functions in connection with an adjudicatory proceeding.

Paragraph (c) of the rule would set forth a procedure to be followed in the event that an ex parte communication is received by the Administrative Law Judge, Board Member, or other person described in paragraph (a). If the communication is in writing, the person receiving the communication would be required to cause a copy of the communication to be served on every party to the proceeding. If the communication is oral, a memorandum setting forth the substance of the communication must be served on each party. All parties would then have 10 days to file with the Administrative Law Judge or the Board a response to the ex parte communication, including any recommendation for sanctions they believe to be appropriate under the circumstances. Sanctions could be imposed for knowing violations of the rule. Such knowing violations could be grounds for a decision adverse to the party violating the rule or suspension or debarment of the person engaging in such conduct under the procedures set forth in Part 513.

The Board wishes to emphasize that communications between the Administrative Law Judge and parties or

their counsel involving routine non-substantive matters such as scheduling of conferences or meetings, requests for copies of documents, or brief extensions of time are not considered to be communications concerning the merits of the proceeding and are not considered to be within the scope of the rule. In addition, the rule would not preclude counsel for the Office of Enforcement from advising the Board on settlement proposals submitted pursuant to proposed § 509.22, or on matters (such as proposed regulations or other legal proceedings) that involve analogous factual or legal issues but are not related to the proceeding at issue.

5. Maintenance of the Record, Service, Filing of Papers, and Copies

"Housekeeping" matters concerning maintenance of the record, service, and filing of papers are covered in proposed §§ 509.8, 509.9, 509.10, and 509.11. Proposed § 509.8 would provide that the Board's Office of the Secretary ("Secretariat") shall maintain the official record in each proceeding. Proposed § 509.9 would amend the present provision governing service by the parties to clarify that service would be deemed to have been accomplished at the time of personal service, upon deposit in the United States mail of the document or paper required to be served, or by delivery of the document or paper to an express mail delivery service. The proposed rule would thus adopt the provision of Rule 5(b) of the Federal Rules of Civil Procedure that service by mail is complete upon mailing. The Board also is proposing to reduce the number of copies of papers that must be filed in adjudicatory proceedings and to clarify the requirements as to filing of papers with the Secretariat. Under proposed § 509.10, the original and one copy of all papers required to be served on other parties to the proceeding would be filed with the Secretariat at the time of service or within a reasonable time thereafter, but in no event later than 3 business days following service on the other parties. A copy would also be served on the Administrative Law Judge at the time of service on the other parties.

The present rule provides that materials required to be filed with the Secretariat must be received by that office in Washington, D.C. on or before the applicable filing deadline. This could lead to a situation in which a party would be required to send materials to the Secretariat prior to the time he was required to serve the opposing parties, in order to ensure that the Secretariat would receive the materials by the

appointed date. In order to rectify this situation, the Board is proposing to adopt a system similar to that employed under Rule 5(d) of the Federal Rules of Civil Procedure, pursuant to which materials may be filed before service or within a reasonable time thereafter. The current rules also are potentially confusing in that the rule governing motions, § 509.10, provides that once a presiding officer is appointed, all motions are "filed" with the presiding officer. Moreover, while § 509.19 currently requires that seven copies accompany the original of any document required to be filed with the Secretariat, this requirement is not applicable after a presiding officer is appointed and prior to the filing of exceptions to the recommended decision because all motions and other papers are filed with the presiding officer. The current rules do not specify any number of copies that must accompany originals filed with presiding officers, and the practice of Administrative Law Judges on this point may vary considerably. The Board believes that, while the Administrative Law Judge must of course receive copies of all motions and other significant papers filed in connection with a proceeding, the proper custodian of the official record in an adjudicatory proceeding should be the Board's Secretariat, not the Administrative Law Judge. The proposed rules would eliminate any uncertainty by providing that the Secretariat would maintain the official record and would receive the original and one copy of all filings (functioning, in essence, in a manner analogous to a "clerk of the court") and that a copy of all such filings would be furnished to the Administrative Law Judge. This is consistent with the procedure recently proposed by the FDIC governing filing of papers and maintenance of the official record. The proposed rule would not apply to the transcript of testimony or exhibits adduced at the hearing or to proposed exhibits submitted to the Administrative Law Judge prior to a hearing in accordance with a prehearing order issued pursuant to proposed § 509.21.

6. Amending Pleadings

The Board is considering adopting a procedure, similar to that utilized by other administrative agencies, that would permit the notice and answer to be amended by leave of the Administrative Law Judge or by the express or implied consent of the parties without formal amendment. Currently, a notice may be amended only by the Board, and there are no formal procedures for amending an answer.

The Board is proposing this change in order to reduce further the number of routine matters upon which it is required to rule prior to a final disposition of a proceeding. The proposed change is not intended to constitute a substantive departure from the present § 509.4 under which matters of fact and law alleged in a notice may be amended at any stage of the proceedings. Accordingly, the Board is proposing to include language similar to that employed under Rule 15 of the Federal Rules of Civil Procedure, which mandates that leave to amend pleadings shall be freely given where justice so requires. This proposal is virtually identical to the rule governing amendment of pleadings recently proposed by the FDIC.

7. Consolidation and Severance

Proposed § 509.16, concerning consolidation and severance of proceedings, is entirely new, and closely follows the FDIC's proposals on these issues. Proposed § 509.16(a) addresses circumstances that may arise both when more than one action is taken that arise out of the same transaction or occurrence and involve common questions of law or fact and when proceedings are instituted seeking the same remedy against two or more respondents based on the same transaction or occurrence. In these circumstances, proceedings generally should be consolidated unless it would cause undue delay or injustice.

Proposed § 509.16(b) provides that a proceeding involving two or more respondents may be severed on the motion of any party or upon the initiative of the Administrative Law Judge or by resolution of the Board. Severance may be appropriate if the proceeding against one or more of the respondents is being stayed, if severance may promote prompt resolution of the proceeding, or if severance would be required to prevent manifest injustice.

8. Interlocutory review

Proposed § 509.18 is a new provision that would permit parties to a proceeding to appeal rulings on motions by the Administrative Law Judge only in very limited circumstances. Interlocutory appeals would be permitted only in extraordinary circumstances that warrant the Board's prompt review. Any party desiring to appeal a ruling of the Administrative Law Judge on an interlocutory basis would be required to submit a motion to the Administrative Law Judge requesting certification to the Board for interlocutory review. Exceptions would be available in cases of rulings by the

Administrative Law Judge suspending an attorney from further participation in a particular proceeding, or denying a motion for summary disposition. Upon certification by the Administrative Law Judge, notice of a denial of a request for certification that a party believes was clearly erroneous, or notice of a ruling that may be appealed without certification, a party would be permitted to file with the Secretariat a petition for interlocutory review of the contested ruling. The petition would include a copy of the order from which interlocutory appeal was being sought and a statement of the factual and legal bases for interlocutory review. Any party would be permitted to serve a response to a petition for review within 10 days of service of the petition. The Board would determine whether to grant the petition and would decide the issue without oral argument or further written submissions unless it otherwise orders. Unless otherwise ordered by the Administrative Law Judge or the Board, no motion for certification, petition for review, or granting thereof would operate as a stay of the proceeding. Any stay of longer than 30 days would require specific Board approval.

The Administrative Law Judge would certify a ruling to the board only upon the motion of a party and a determination by him that the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate conclusion of the proceeding. These criteria are modeled upon Rule 5 of the Federal Rules of Appellate Procedure, which concerns interlocutory appeals by permission pursuant to 28 U.S.C. 1292(b). The Board would have the authority to dismiss an interlocutory appeal if it determined that the Administrative Law Judge's certification was erroneously granted or that prompt consideration of the appeal was not warranted under the above criteria.

9. Prehearing Procedures

A number of new provisions are being proposed with the aim of simplifying proceedings by narrowing factual and legal issues to be determined, resolving as many factual issues as possible prior to commencement of the hearing, and providing for the exchange of information by the parties in advance of the hearing so that only disputes regarding genuine material factual or legal issues need to be resolved. In this regard, the proposed rules contain provisions for the exchange of lists of witnesses expected to testify at the hearing together with a summary of

each witness' expected testimony prior to the proceeding; copies of all exhibits that each party intends to introduce as evidence at the hearing, and stipulations as to factual matters. In addition, any party would be permitted to serve (and the Administrative Law Judge may require all parties to serve) a prehearing brief outlining the applicable legal principles and what he believes the evidence will demonstrate. The proposed procedures closely resemble those recently proposed by the FDIC and would codify those actually followed in most Board adjudications today.

The Board believes that these provisions will streamline its proceedings considerably. Resolving factual issues in advance of the hearing will narrow the focus and shorten the time required for the hearing by ensuring that only those matters that are genuinely contested need to be established before the Administrative Law Judge. Prehearing identification of exhibits will give each party the opportunity to know in advance what materials the opposing party plans to introduce. This will give each party the chance to formulate any applicable objections to the introduction of such materials and submit those objections to the Administrative Law Judge prior to the actual hearing, thereby eliminating the need for time-consuming arguments regarding the admissibility of documents at the hearing. It is contemplated by the proposed rule that objections to the introduction of exhibits and rulings thereon will be handled in this fashion during the prehearing stage, so that all exhibits to which objection has not been taken, or which the Administrative Law Judge determines should be admitted into evidence, may simply be considered part of the record and utilized by the parties at the hearing without the need for document-by-document introduction by counsel or an individual ruling by the Administrative Law Judge on each exhibit. In this regard, the Board notes that authenticity of documents should seldom be an issue in administrative proceedings. This is especially true because many of the documents to be introduced in the Board's proceedings will be from the records of the insured institution to which the particular proceeding pertains, from reports or other materials filed with the Board pursuant to its regulations and of which the Board may take official notice, or from public records. Furthermore, even where a document does not fall into one of the above categories, the Board believes that authenticity should become an issue only if there is a good

faith reason to doubt the genuineness of a document. The Board is of the opinion that the prehearing procedures proposed today will permit the parties to eliminate as many problems and needless time delays as possible in this area.

10. Subpoenas

Proposed § 509.22 contains technical and clarifying amendments to the Board's procedural rule governing subpoenas requiring the attendance of witnesses and the production of physical evidence. It would make clear that subpoenas are to be issued only to require witnesses to testify and produce documents at the hearing, rather than as discovery devices to require prehearing depositions and the production of documents in advance of the hearing. A separate provision, § 509.23, would address the taking of depositions for purposes of preserving the testimony of witnesses who will be unavailable to testify at the hearing. Moreover, because of the requirement of proposed § 509.19 that proposed exhibits be submitted to the Administrative Law Judge in advance of the hearing, there should seldom, if ever, be a need for subpoenas for the production of documents in advance of the hearing. The portion of the proposed rule governing document production is primarily intended to cover instances in which, for example, a party knows of the existence of a material document in the possession of a prospective witness but has been unable to obtain a copy of the document voluntarily. In that event, the Board believes that the party should have the ability to require the witness to appear at the hearing and produce that document despite the general requirement that all exhibits or a list thereof be submitted in advance. The proposed rule is not, however, intended to authorize "fishing expeditions" whereby a witness is required to produce at or prior to a hearing a voluminous amount of material that has not been identified in advance of the hearing and may be of little or no relevance.

The proposed rule also would lengthen from 5 days to 10 days the time within which a person to whom a subpoena is directed may move to quash the subpoena and would clarify that the party at whose request the subpoena is issued is responsible for serving the subpoena once it is executed by the Administrative Law Judge.

11. Depositions

Proposed § 509.23 would set forth the procedures for the taking of depositions in adjudicatory proceedings. It would

require that a party desiring to take the deposition of a witness first apply to the Administrative Law Judge setting forth the reasons that the deposition is necessary. Any party could serve a response to such an application within 10 days of receipt of a copy of the application. The Administrative Law Judge could permit the deposition to be taken only upon a showing that the prospective deponent will be or is likely to be unavailable to testify at the hearing, the testimony will be relevant to the proceeding, and the taking of the deposition will not result in any undue burden to any other party or in undue delay in the proceeding.

The requirement of prior application to the Administrative Law Judge currently exists in the Board's procedural rules, but the language of the current provision may not be sufficiently clear that it applies to proceedings under Part 509. Currently, § 509.8 sets forth a procedure for depositions "in connection with any hearing provided for in Parts 509a or 565, or in § 509.26 of this chapter." 12 CFR 509.8 (a) and (b). It does not, however, expressly mention Part 509, even though it is included in that Part. In order to eliminate any possible confusion on this issue, proposed § 509.23 would by its terms apply to any hearing conducted under Part 509 as well as Parts 509a or 565, or in § 583.26(d). This procedure would maintain the Board's existing position that there is no general prehearing right of discovery for respondents in administrative enforcement proceedings. This comports with the existing case law in this area. See, e.g., *Silverman v. Commodity Futures Trading Commission*, 549 F.2d 28, 33 (7th Cir. 1977).

12. Official Notice

A new provision, § 509.24(b), would permit the Administrative Law Judge or the Board to take official notice of any material fact that might be judicially noticed by a district court of the United States and of any material information in the official public records of the Board. The Board believes that this proposed revision would likewise expedite proceedings by eliminating the need to "prove" obvious facts. If any party requests that official notice be taken of any fact, other parties to the proceeding would be afforded the opportunity under the proposal to establish the contrary.

13. Summary Disposition

The Board is considering adopting a procedure, similar to those utilized by a number of other administrative agencies, for summary disposition of

proceedings in which the material facts are undisputed.¹ Under proposed § 509.26, any party who believes that there is no genuine dispute as to the material facts of an adjudicatory proceeding and that he is entitled to judgment as a matter of law would be permitted to move for summary disposition of all or any part of the proceeding. The party would then be required to submit a statement of the material facts he contends are not in dispute, accompanied by a brief in support of his contention that he is entitled to judgment as a matter of law. Any other party would then have an opportunity to submit an opposition to the motion for summary disposition and/or to countermove for summary disposition. Upon receipt of the parties' papers, the Administrative Law Judge could require additional briefing or schedule oral argument on the motion or motions. Thereafter, if the Administrative Law Judge determined that there was no dispute as to the material facts in the proceeding, a hearing to adduce further facts was unnecessary, and that any party was entitled to a decision in his favor as a matter of law, he would submit a recommended decision to the Board following the procedure set forth in proposed § 509.27(c). The case would then proceed as set out in proposed §§ 509.29-32. No such recommendation to the Board would be required if the Administrative Law Judge determined that no party was entitled to summary disposition. In addition, if the Administrative Law Judge determined that a party was entitled to judgment only on certain claims but not on all claims on which he has moved for summary disposition, the Administrative Law Judge would not be required to submit a recommended decision to the Board until after the hearing had been concluded. Instead, he could issue a prehearing order that the matters upon which the party was entitled to judgment would not need to be addressed at the hearing. Following the hearing, he would incorporate his findings of fact and conclusions of law on the claims summarily disposed of into his recommended decision to the Board. Alternatively, the Administrative Law Judge could find that an order should be entered based on the presence of all of the necessary statutory elements regarding certain transactions or occurrences only, while not necessarily making a similar finding

¹ See, e.g., 7 CFR 10.91 (Commodity Futures Trading Commission); 16 CFR 3.24 (Federal Trade Commission).

with respect to other transactions or occurrences alleged in a notice. Thus, for example, in a removal/prohibition proceeding, the Office of Enforcement may move for summary disposition based on allegations concerning two loan transactions. If the Administrative Law Judge found that one, but not both, of the transactions contained no dispute as to the material facts and that all of the elements required under the NHA or the HOLA to support a removal/prohibition order were present, he could recommend to the Board that a removal/prohibition order be issued based on that transaction, thereby obviating the need for a fact finding hearing on either transaction.

In moving for or opposing summary disposition, a party would not be permitted to rely on mere allegations, but would be required to submit documentary evidence, stipulations, admissions in pleadings, and/or deposition testimony in support of his contention.

The Board is proposing this procedure in order to provide a mechanism for further shortening and streamlining of proceedings, thereby saving the parties, the Board, and its staff considerable time and expense. The Board wishes to emphasize that the proposed summary disposition procedure is not intended to deprive any respondent of the opportunity to appear before the Administrative Law Judge to present its case. Rather, the Board is proposing a mechanism whereby a "fact trial" may be dispensed with, and written submissions and/or an oral argument on the law substituted, where there are no disputed material facts. The Board does not believe that such a procedure would deprive a respondent of any "hearing" to which he is entitled under the HOLA, the NHA or any of the Board's other enabling statutes. Instead, it would merely provide that the hearing could take a different form; instead of a lengthy "trial" to determine the facts, the hearing could consist of oral argument and/or legal briefing as to the proper application of relevant legal principles of the uncontested facts. Comments are solicited on whether the Board should adopt such a procedure and what additional or alternative provisions it should contain if adopted.

14. Oral Argument Before the Board

Proposed § 509.30 would revise current § 509.14 concerning oral argument before the Board on the recommended decision of the Administrative Law Judge and the findings of fact and conclusions of law upon which the recommended decision was based. The principal change from

the current provision would be to require that any party requesting oral argument before the Board show good cause as to why oral argument was necessary, including the reasons that any argument proposed to be presented orally was not, or could be, adequately presented in writing.

15. Decision of the Board

Proposed § 509.32 would add a provision to the present § 509.16, regarding the decision of the Board, providing that employees of the Board who have not engaged in any way in the performance of investigatory or adjudicatory functions in connection with a proceeding may, pursuant to delegated authority, advise and assist the Board in its consideration of that proceeding. This provision is intended to apply to those situations in which matters must be decided by the Board itself, rather than the Administrative Law Judge hearing the case. Included in this category would be motions submitted to the Board prior to the appointment of the Administrative Law Judge, motions to dismiss a proceeding (which only the Board may decide), and the final decision of the Board following the Administrative Law Judge's recommended decision.

B. Subpart B: Assessment of Civil Money Penalties

A new Subpart B would set forth specific procedures for proceedings to determine whether and to what extent civil money penalties should be assessed against insured institutions, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof, and/or related officials who have violated final cease-and-desist orders or any provision of the Holding Company Act or regulations promulgated thereunder. These provisions, as well as the provisions of Subpart A, would apply to such proceedings.

Proceedings to assess civil money penalties would commence with the issuance of a notice of assessment of civil money penalty. The notice would contain a statement of the facts constituting the grounds for the assessment of the penalty, the amount of the penalty, the date by which the penalty is to be paid, and a statement informing the party being assessed the penalty of its right to request a hearing to contest the assessment of the penalty within 10 days after service of the notice. A party requesting a hearing would also be required to file an answer as prescribed in proposed § 509.14 within 20 days of service of the notice of assessment. Upon receipt of a request

for a hearing, the Board would notify the party afforded the hearing of the time and place for the hearing. The hearing would be scheduled at least 30 days but not more than 60 days following the service of the notice of hearing. The hearing would be conducted in accordance with the procedural provisions of Supart A. A party requesting a hearing would not be required to pay the penalty until after the hearing had been conducted.

Following the hearing (or in the event that the party being assessed consents to the assessment of the penalty), payment of the penalty would be made as provided in proposed § 509.38. In determining the amount of the penalty to be assessed, the Board will consider the financial strength and good faith of the person or entity being assessed, the seriousness of the violation, any previous violations, and any other matters that the interests of justice may require.

II. Proposed Revisions to Part 512

The Board is also proposing several technical changes to Part 512, its Rules for Investigative Proceedings and Formal Examination Proceedings. These proposed revisions are summarized below.

The definition of "formal examination proceeding" contained in § 512.2(c) would be revised to reflect the clarification of the Board's authority provided by the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552, to conduct investigations of persons seeking to acquire control of insured institutions pursuant to the Control Act, and to utilize its formal examination authority in doing so, as well as investigating other possible violations of the Control Act.

Section 512.3 would be amended to state simply that all materials gathered during the course of any formal examination proceeding or investigative proceeding are confidential. This is simply a grammatical change and the Board does not intend any substantive departure from its current practice in this area.

Section 512.4 would be revised to provide that the Director or any Deputy Director of the Office of Enforcement would be authorized to approve the release of transcripts of a witness' own testimony to that witness. Currently, the regulation provides that this authorization may be given only by the Board; in practice, however, the Director of the Office of Enforcement performs this function pursuant to a delegation of authority from the Board. The proposed amendment would simply codify the

agency's present practice and reduce the number of routine matters with which the Board must deal.

Section 512.5 would be amended in three respects. Paragraph (b)(1) would be amended to provide that an attorney who has been suspended or debarred from practice by the highest court of any state, commonwealth, territory, possession or the District of Columbia, or by the Board in accordance with Part 513 would be precluded from representing witnesses before the Board in investigative and formal examination proceedings (currently the only basis for such preclusion under § 512.5 is suspension or debarment by the Board pursuant to Part 513). Additionally, paragraph (b)(2) would be amended to make it clear that only the attorney actually personally representing a witness (as distinguished from attorneys for the institutions that are the subjects of investigative or formal examination proceedings or for other witnesses or interested persons) may accompany that witness during the taking of that witness' testimony. Again, this is the practice that has been followed by the Board for many years in this area, and the proposed amendment would be of a clarifying nature only.

Section 512.5(c) would be deleted. Currently, this paragraph provides that in a public investigative proceeding conducted under the Holding Company Act, if the record contains allegations of wrongdoing by any individual, the person has the right to appear on the record and to cross-examine witnesses and produce rebuttal testimony and documentary evidence. The Board is considering deleting this provision for a number of reasons. First, in the nearly 20 years that the rule has been in existence, the Board has no record of its ever having conducted a "public investigative proceeding." Second, the whole notion of cross-examination and the presentation of "rebuttal" testimony and documentary evidence is inconsistent with the function of an investigation: the purpose of an investigative proceeding is to develop facts in order to determine whether violations of laws, rules, or regulations have occurred and whether an insured institution and individuals therein have engaged in unsafe or unsound practices with respect to the institution. It does not, however, determine rights or result in the issuance of orders. Permitting individuals to present "rebuttal" evidence during the course of an investigation fundamentally alters the nature of the proceeding by converting the investigation into a trial. This, in turn, can result in substantial delays

with little or no benefit to the decision making process. In fact, the FDIC, having experienced precisely these sorts of pointless delays and arguments in connection with its own investigations, recently proposed the deletion of its own analogous provision, 12 CFR 308.51(d). See 53 FR 5392, 5401 (Feb. 24, 1988). In the preamble to its proposal, the FDIC observed that rather than producing useful rebuttal information, § 308.51(d) had proven confusing and unworkable. *Id.* Accordingly, the FDIC proposed that the provision be deleted. Of course, the proposed deletion of § 512.5(c) does not preclude designated representatives conducting investigations and formal examinations from using their discretion to seek out evidence or testimony rebutting or otherwise relating to any apparent wrongdoing. Likewise, no individual is ever precluded from providing information relevant to an investigation or an explanation of his actions to the Board staff if he believes that circumstances so require.

Section 512.7, relating to the service of subpoenas, would be amended to add a provision that would permit service by an express delivery service and would remove any language implying that a subpoena could be issued at the instance of anyone other than the Board officials(s) conducting the investigative or formal examination proceedings.² In this regard, new paragraph (a) would remove the reference to the tender of fees and mileage at the time a subpoena is served, and a new, separate paragraph (d) would provide simply that witnesses summoned to appear in any investigative or formal examination proceeding would be paid the same fees and mileage paid to witnesses in United States district courts. Paragraph (b) would be revised to provide that all motions to quash subpoenas issued in any investigative or formal examination proceeding must be addressed to and decided by the Director or any Deputy Director of the Office of Enforcement. Finally, paragraph (c) would be amended to provide that foreign nationals are subject to service of subpoenas if service is made upon a duly authorized agent of that person located in the United States. Again, this proposed revision comports with the Board's current interpretation and practice on this issue and does not represent a substantive change.

² The present version of § 512.7 implies that a subpoena may be issued by and served at the instance of a person calling "rebuttal" witnesses pursuant to § 512.5(c). However, in view of the proposal that § 512.5(c) be deleted, any such implication would be unnecessary and inappropriate.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives and legal bases underlying the proposed rules.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. *Small institutions to which the proposed rules would apply.* The proposed Rules of Practice and Procedure and Rules for Investigative Proceedings and Formal Examination Proceedings would apply equally to all insured institutions.

3. *Impact of the proposed rules on small institutions.* The rule would impose no new recordkeeping requirements or other additional administrative burden on any insured institution.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rules.* The Board is not aware of any alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above. The Board has, however, specifically requested comments regarding such alternatives.

List of Subjects in 12 CFR Parts 509 and 512

Administrative practice and procedure, Investigations.

Accordingly, the Board hereby proposes to amend Parts 509 and 512, Subchapter A, Chapter V, Title 12 *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

1. Amend Subchapter A by revising Part 509 to read as follows:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

Subpart A—General

Sec.

- 509.1 Scope of regulations.
- 509.2 Definitions.
- 509.3 Appointment of Administrative Law Judge.
- 509.4 Authority of the Administrative Law Judge.
- 509.5 Appearance and practice in an adjudicatory proceeding.
- 509.6 Good faith certification.
- 509.7 Ex parte communications.
- 509.8 Maintenance of the record.
- 509.9 Service.
- 509.10 Filing of papers.

- 509.11 Formal requirements as to papers filed.
- 509.12 Computing time.
- 509.13 Notice.
- 509.14 Answer.
- 509.15 Amending pleadings.
- 509.16 Consolidation and severance of proceedings.
- 509.17 Motions.
- 509.18 Interlocutory review.
- 509.19 Prehearing conference and exchange of information.
- 509.20 Opportunity for informal settlement.
- 509.21 Stipulations.
- 509.22 Subpoenas for documentary or physical evidence or for witness attendance.
- 509.23 Depositions.
- 509.24 Conduct of hearings.
- 509.25 Private and public hearings.
- 509.26 Summary disposition.
- 509.27 Proposed findings of fact and conclusions of law and recommended decision.
- 509.28 Briefs.
- 509.29 Exceptions.
- 509.30 Oral argument before the Board.
- 509.31 Notice of submission to the Board.
- 509.32 Decision of the Board.

Subpart B—Assessment of Civil Money Penalties

- 509.33 Scope.
- 509.34 Notice of assessment; request for hearing; answer.
- 509.35 Notice of hearing.
- 509.36 Assessment orders.
- 509.37 Payment of civil penalty.
- 509.38 Relevant considerations.

Authority: Sec. 17, 47 Stat. 736, as amended, 12 U.S.C. 1437; sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended, 12 U.S.C. 1725, 1726, 1730; sec. 408, 82 Stat. 5, as amended 12 U.S.C. 1730a; sec. 12, 48 Stat. 892, as amended, 15 U.S.C. 78f; Reorg. Plan No. 3 of 1947; 3 CFR, 1943–1948 Comp.

Subpart A—General

§ 509.1 Scope of regulations.

This part prescribes rules of practice and procedure applicable to adjudicatory proceedings as to which hearings are provided by the following statutory provisions:

(a) Hearings under section 6(i) of the Federal Home Loan Bank Act, as amended, 12 U.S.C. 1426(i), to determine whether cause exists for the removal of any member of a Federal Home Loan Bank from membership or for depriving any non-member borrower of the privilege of obtaining advances from a Federal Home Loan Bank;

(b) Hearings in cease and desist proceedings under section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(2) ("HOLA") and section 407(e) of the National Housing Act, as amended, 12 U.S.C. 1730(e) ("NHA");

(c) Hearings under section 5(d)(4) of the HOLA, 12 U.S.C. 1464(d)(4), and

section 407(g) of the NHA, 12 U.S.C. 1730(g), to determine whether a director, officer, or other person should be removed from office and/or prohibited from further participation in the conduct of the affairs of an insured institution;

(d) Hearings under section 407(b) of the NHA, 12 U.S.C. 1730(b), to determine whether cause exists for the termination of the insured status of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

(e) Hearings under section 408(a)(2)(D) of the NHA, 12 U.S.C. 1730a(a)(2)(D) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of an insured institution or any other company;

(f) Hearings under section 407(k)(3) of the NHA, 12 U.S.C. 1730(k)(3), section 408(j)(4)(C) of the NHA, 12 U.S.C. 1730a(j)(4)(C), and section 5(d)(8)(B) of the HOLA, 12 U.S.C. 1464(d)(8)(B), to determine whether and/or to what extent civil penalties should be assessed against institutions, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials in violation of any order issued under the Board's cease-and-desist authority or any provision of section 408 of the NHA, 12 U.S.C. 1730a, or any regulation (see Parts 583 and 584 of Subchapter F of this chapter) or order issued pursuant thereto; and

(g) Hearings under section 408(h)(5)(A) of the NHA, 12 U.S.C. 1730a(h)(5)(A), to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a noninsured savings and loan holding company subsidiary;

(h) Hearings under section 407(q)(4) of the NHA, 12 U.S.C. 1730(q)(4), to determine whether the Federal Savings and Loan Insurance Corporation should issue an order to approve or disapprove a person's proposed acquisition of an insured institution and/or savings and loan holding company;

(i) Hearings under section 15(c)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(4) (the "Exchange Act"), to determine whether any institution or person subject to the jurisdiction of the Board pursuant to section 12(i) of the Exchange Act, 15 U.S.C. 78b(i), has failed to comply with the provisions of section 12, 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act.

§ 509.2 Definitions.

As used in this part:

(a) The term "adjudicatory proceeding" means a proceeding conducted under this part and leading to

the formulation of a final order other than a regulation.

(b) The term "institution" means a Federally-chartered association within the meaning of section 2(d) of the HOLA, 12 U.S.C. 1464(d), an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institution") within the meaning of section 401(a) of the NHA, 12 U.S.C. 1730(a), a service corporation subsidiary of an insured institution, a savings and loan holding company within the meaning of section 408(a)(1)(D) of the NHA, 12 U.S.C. 1730a(a)(1)(D), and a subsidiary of a savings and loan holding company within the meaning of section 408(a)(1)(H) of the NHA, 12 U.S.C. 1730a(a)(1)(H).

(c) The term "Board" means the Federal Home Loan Bank Board or, where appropriate, the Federal Savings and Loan Insurance Corporation.

(d) The term "Secretariat" means the Office of the Secretary to the Federal Home Loan Bank Board, including any Acting or Assistant Secretary to the Board.

(e) The term "Administrative Law Judge" means an administrative law judge appointed under section 3105 or detailed to the Board pursuant to section 3344 of Title 5 of the United States Code to preside at a hearing conducted under this part. As used in this part, the term also shall refer to the Board or any person to whom the Board has delegated authority to act when an Administrative Law Judge has not been appointed or is unavailable.

(f) The term "party" means an institution or person named as a respondent in any adjudicatory proceeding. The Office of Enforcement of the Board also is deemed to be a party to all proceedings under this part.

(g) The term "Respondent" means any institution or person against whom the Board seeks relief in the notice commencing the adjudicatory proceeding.

(h) The term "notice" means the notice that commences the adjudicatory proceeding, is served upon the Respondent by the Board and designates a date, time, and place for the hearing to be conducted in connection with the allegations in the notice.

(i) Any use of a masculine, feminine, or neuter gender shall be deemed to encompass whichever usage would be appropriate under the circumstances.

§ 509.3 Appointment of Administrative Law Judge.

(a) *Appointment.* Unless otherwise directed by the Board, all hearings under

this part shall be conducted by an Administrative Law Judge appointed by the United States Office of Personnel Management.

(b) *Procedures.* (1) Following the issuance and service of a notice, the Board or any person designated by the Board shall promptly request the appointment of an Administrative Law Judge to conduct the proceeding.

(2) Upon notification that an Administrative Law Judge has been appointed, the Board or any person designated by the Board shall advise the parties in writing of such appointment.

(3) If for any reason the designated Administrative Law Judge is unable to conduct or complete the proceeding for which he was appointed, a successor Administrative Law Judge shall be requested and appointed.

§ 509.4 Authority of the Administrative Law Judge.

All hearings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The Administrative Law Judge designated pursuant to this part to preside at any such hearing shall be in charge of the hearing, and shall have the duty to conduct it in a fair and impartial manner and to take all action to avoid unnecessary delay in the disposition of the proceeding. Such Administrative Law Judge shall have all powers necessary to that end, including the following powers:

(a) To administer oaths and affirmations;

(b) To issue subpoenas and subpoenas duces tecum, as authorized by this part, and to revoke, quash, or modify any such subpoena;

(c) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(d) To take or cause depositions to be taken as authorized by this part;

(e) To regulate the course of the hearing and the conduct of the parties and their counsel;

(f) To hold conferences for the settlement or simplification of issues or for any proper purpose; and

(g) As justice may require, to consider and rule upon all procedural and other motions appropriate in an adversarial proceeding, except that only the Board shall have the power to decide any motion to dismiss the proceeding or other motion that results in final determination of the merits of the proceeding.

Without limitation on the foregoing, the Administrative Law Judge shall, subject to the provisions of this part, have all

the authority of section 556(c) of Title 5 of the United States Code.

§ 509.5 Appearance and practice in an adjudicatory proceeding.

(a) *Appearance before the Board.*—(1) *By non-attorneys.* An individual may appear on his own behalf; an authorized member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority before the Board (including representation before the Administrative Law Judge appointed to conduct the proceeding), unless such individual, partner, officer, or employee has been suspended or debarred from practice in accordance with the provisions of Part 513 of this subchapter or excluded or suspended from the proceeding pursuant to paragraph (c) of this section.

(2) *By attorneys.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and who has not been suspended or debarred from practice by the bar of any such political entity or before the Board in accordance with the provisions of Part 513 of this subchapter, and has not excluded or suspended from a particular proceeding in accordance with paragraph (c) of this section may represent parties or other persons in such adjudicatory proceeding. An attorney representing a party in an adjudicatory proceeding shall file a notice of appearance with the Secretariat, containing a written declaration that he is currently qualified to practice before the Board as provided by this paragraph (a)(2) and is authorized to represent the particular party on whose behalf he acts.

(b) *Conflict of interest in representation.* An individual shall not represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be affected by that individual's responsibilities to a third person, or by the individual's own interests. The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(c) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding under this

part, as determined in the sole discretion of the Administrative Law Judge, may be grounds for exclusion therefrom and suspension for the duration of the proceeding and may be grounds for suspension or debarment pursuant to Part 513 of this subchapter.

(d) *Representatives of nonparties.* A nonparty who is required or requested to testify at a prehearing deposition pursuant to § 509.23 may be represented by any person qualified to represent a party before the Board. Anyone representing a nonparty in such a situation need not file a notice of appearance unless expressly ordered to do so by the Administrative Law Judge, but may be required by the Administrative Law Judge or any party to state on the record or in writing the information required in a notice of appearance. No attorney or other representative who refuses to provide such information shall be permitted to represent any person in the proceeding.

§ 509.6 Good faith certification.

(a) *General requirement.* After the issuance of the notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in that attorney's individual name and shall state the attorney's business address and telephone number. A party who is not represented by an attorney shall sign his presentation and shall include his address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification by the signer that the attorney or party has read the presentation; that to the best of his knowledge, information, and belief formed after reasonable inquiry, the presentation is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a presentation is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by that attorney or party to the best of his knowledge, information, and belief formed after reasonable inquiry, his statements are well grounded in fact and are warranted by existing law or a good faith argument for the extension,

modification, or reversal of existing law and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violation.* If a presentation is made in violation of this section, the Administrative Law Judge may, on motion of any party or on his own motion, impose upon the attorney, represented party, or both, any appropriate sanction authorized by this part.

§ 509.7 Ex parte communications.

(a) *Definition.* "Ex parte communication" means any material oral or written communication concerning the merits of an adjudicatory proceeding, which takes place between a party, his counsel, or another person interested in the proceeding and the Administrative Law Judge handling that proceeding, the Board, any member of the Board, or any person who may reasonably be expected to be involved in assisting or advising the Board with respect to the preparation of a decision with respect to that proceeding and which was neither on the record nor on reasonable prior notice to all parties.

(b) *Prohibition of ex parte communications.* From the time the notice is served, or, in the event that the individual responsible for the communication learns that a notice has been approved by the Board, from the date that information is acquired until the date the Board serves its final decision pursuant to § 509.32, no person, including any person involved in the decisional process concerning the proceeding, shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding.

(c) *Communications involving the Administrative Law Judge.*

(1) The Administrative Law Judge shall not consult anyone within the Board on the merits of an adjudicatory proceeding, except upon notice and opportunity for all parties to participate in such consultation. This section shall not be construed as prohibiting the Administrative Law Judge from consulting with employees or agents of the Board concerning procedural matters.

(2) The Administrative Law Judge shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the Board engaged in the performance of investigatory or adjudicatory functions.

(d) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Board,

any member of the Board, or other person identified in paragraph

(a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within 10 days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The Administrative Law Judge shall then determine whether any action should be taken concerning the ex parte communication and, if so, what the action should be.

(e) *Sanctions.* To the extent consistent with the interests of justice and the policy of the NHA, the HOLA, and/or the Federal Home Loan Bank Act, knowing violation of this section may be a ground for a decision adverse to a party who violates this section, or may be a ground for suspension or debarment of any person engaging in such conduct under the procedures set forth in § 509.5(c) herein or in Part 513 of this subchapter.

§ 509.8 Maintenance of the record.

The transcript of testimony and exhibits, together with all papers and requests (including motions, stipulations, exceptions, rulings, pleadings, briefs, and other materials filed in connection with the proceeding) shall constitute the exclusive record for decision in accordance with this part. The Secretariat shall maintain the official record of all papers filed in each proceeding under this part. Upon appointment of the Administrative Law Judge, the Secretariat shall forward to the Administrative Law Judge a copy of the existing record of the proceeding.

§ 509.9 Service.

(a) *By the Board.* All documents or papers required to be served by the Board upon any party afforded a hearing shall be served by the Secretariat unless some other person shall be designated for such purpose by the Board. Such service, except for service on counsel for the Office of Enforcement, shall be made by personal service or by registered mail, addressed to the last known address of such party, or on the attorney or representative of record of such party, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address of such party. Such service may also be made in

such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

(b) *By the parties.* Except as otherwise expressly provided in this part, all documents or papers filed in a proceeding under this part shall be served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding, or, if any party is not so represented, then upon such party. Such service may be made by personal service or by registered, certified, or regular first-class mail, or an express delivery service addressed to the last known address of such parties, or their attorneys or representatives of record. Service shall be deemed to have been made at the time of personal service or upon deposit in the United States mails of a properly addressed and postage-paid document, or upon delivery of such document to an express delivery service. All such documents or papers shall include a certificate, signed by the person making service and stating that such service on other parties has been made, and indicating the date and method of such service.

§ 509.10 Filing of papers.

(a) Unless otherwise specifically provided in the notice or by the Administrative Law Judge, an original and one copy of all documents and papers required to be served under this part shall be filed with the Secretary, with a copy to the Administrative Law Judge after he is designated. This rule shall not apply to the transcript of testimony and exhibits adduced at the hearing or to proposed exhibits submitted in advance of the hearing pursuant to an order of the Administrative Law Judge pursuant to § 509.21.

(b) All material required to be filed with the Board or the Secretariat shall be filed with the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552. Any such filing with the Secretariat shall be made at the time of service or within a reasonable time thereafter, but must be received by the Secretariat in Washington, DC within three business days of service on the other parties.

§ 509.11 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this part shall be double spaced and printed or typewritten on 8½ by 11 inch paper. All copies shall be clear and legible.

(b) *Signature.* The original of all papers filed by a party shall be signed

by such party or by the duly authorized agent or attorney of such party and must show the address of the signer. Counsel for the Office of Enforcement shall sign the original of all papers filed by that Office.

(c) *Caption.* All papers filed must include at the head thereof, or on the title page, the name of the Board or FSLIC, the name of the party afforded the hearing, the number of the resolution giving notice of the hearing, and the subject matter of the particular paper.

§ 509.12 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor such federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and such federal holidays shall be excluded in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within a period of time prescribed in this part after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period; *provided*, however, that if an overnight mail service is used, one day shall be added to the prescribed period.

(c) *Change of time limits.* Except as otherwise provided by law, the Administrative Law Judge may, at the request of the parties or sua sponte, extend the time limits prescribed by these rules or by any notice or order issued in the proceedings for good cause shown. Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27(d), the Board or any person designated by the Board may grant such extensions for good cause shown.

§ 509.13 Notice.

Whenever a hearing is ordered by the Board in any proceeding provided for in this part, a notice shall be served by the Secretariat, or other person designated for such purpose by the Board, upon the party or parties afforded the hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and, if an Administrative Law Judge has been

designated to preside at the hearing, the name and address of such Administrative Law Judge. Such notice shall also contain a statement of the matters of fact and law constituting the grounds for the hearing.

§ 509.14 Answer.

(a) *When required.* In any notice commencing an adjudicatory proceeding, the Board shall direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice. Except where a different period of not less than 10 days after service of a notice is specified by the Board, a party shall file an answer with the Secretariat within 20 days after service upon him of the notice.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice, unless the party is without knowledge or information, in which case his answer shall so state and such statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party contends in good faith that part of an allegation is false, he shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, his answer shall consist of a statement that he admits all of the allegations to be true. Such answer shall constitute a waiver of hearing as to the facts alleged in the notice. All parties will then have an opportunity to serve proposed findings of fact, conclusions of law, and a discussion of the appropriate remedy under the circumstances, together with supporting briefs, with copies to the Administrative Law Judge. These filings, together with the notice, will provide a record basis on which the Administrative Law Judge shall file with the Secretariat his recommended decision in accordance with section 557 of Title 5 of the United States Code.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations in the notice. If no answer is filed, the Administrative Law Judge, without further notice to the party, may receive proposed findings of fact, conclusions of law, and a recommended order from the Office of Enforcement and, based thereon, may find the facts to be as alleged in the notice and file with the Secretariat a recommended decision containing such findings and

appropriate conclusions. The Administrative Law Judge may, for good cause shown, permit the filing of a delayed answer after the time for filing the answer has expired, provided that a request to file such a delayed answer is made to the Administrative Law Judge within the time prescribed for the filing of the answer. No request to file a delayed answer will be considered after the time for filing the answer has expired.

§ 509.15 Amending pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the Administrative Law Judge. Such leave shall be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Administrative Law Judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the Administrative Law Judge may allow the notice or answer to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Administrative Law Judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

§ 509.16 Consolidation and severance of proceedings.

(a) *Consolidation.* On motion of any party, or upon the initiative of the Administrative Law Judge, or by resolution of the Board:

(1) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction or occurrence, or series of transactions or occurrences, and material common questions of law or fact will arise in each of the proceedings, unless such consolidation would cause unreasonable delay or injustice.

(2) Any two or more proceedings against the same or at least one common respondent that involve or arise out of the same transaction or occurrence, or series of transactions or occurrences, and involve common questions of law or fact may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or injustice.

(b) *Severance.* On the motion of any party or upon the initiative of the Administrative Law Judge, or by resolution of the Board, a proceeding involving two or more respondents may be severed for some or all purposes if:

(1) Severance is appropriate because the proceeding against one or more respondents is stayed or cannot proceed; or

(2) Severance will promote prompt resolution of the proceeding as to one respondent, or as to some or all respondents; or

(3) Severance is otherwise required to prevent manifest injustice.

§ 509.17 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After an Administrative Law Judge has been designated to preside at a hearing and before the filing with the Secretariat of his recommended decision, all such motions shall be filed with the Secretariat, with a copy to the Administrative Law Judge, as provided in § 509.10. At all other times motions shall be addressed to the Board and filed with the Secretariat. In either case, a copy shall also be served on every other party to the proceeding. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally on the record unless the Administrative Law Judge directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) *Responses.* Within 15 days after service of any written motion, or within such other period of time as may be fixed by this part or by order of the Administrative Law Judge, any party may file a written response to such motion. The moving party shall have no right to reply to such response except as expressly permitted by this part or by order of the Administrative Law Judge. The Administrative Law Judge, the Board, or any person duly designated by the Board may waive the requirements of this section as to motions for brief extensions of time and may rule upon such motions after receiving an oral response from the opposing party.

(c) *Dilatory motions not permitted.* Repetitive or numerous motions that raise the same issues or arguments or deal with the same subject matter as previous motions shall not be permitted. Such dilatory motions may form the basis for sanctions under § 509.5(c) of this part or Part 513 of this subchapter. The Administrative Law Judge may assess costs attendant to responding to or ruling on such motions against parties who file such dilatory motions.

(d) *Oral argument.* No oral argument will be heard on motions except as directed by the Administrative Law Judge. Written memoranda or briefs may be filed with motions or responses thereto, stating the points and authorities relied upon in support of the position taken.

(e) *Rulings on motions.* Except as otherwise provided in this part, the Administrative Law Judge shall rule promptly upon all motions properly served upon him and upon such other motions as the Board may direct, except that if the Administrative Law Judge finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision.

(f) *Continuation of proceeding.* Unless otherwise ordered by the Administrative Law Judge or the Board, the proceeding including the hearing, shall continue pending the determination of any motion that must be decided by the Board.

§ 509.18 Interlocutory review.

(a) *General rule.* The Board will review a ruling of the Administrative Law Judge prior to the submission of the Administrative Law Judge's recommended decision only in extraordinary circumstances that warrant the Board's prompt review and in accordance with the procedures set forth in this section.

(b) *Scope of review.* An interlocutory appeal may be permitted, in the discretion of the Board, under the following circumstances:

(1) Appeal from a ruling pursuant to § 509.5 suspending an attorney or other representative from participation in a particular proceeding;

(2) Appeal from an order denying a motion for summary disposition;

(3) On certification by the Administrative Law Judge in accordance with paragraph (c) of this section;

(4) Upon any other interlocutory ruling where certification has been denied by the Administrative Law Judge. Interlocutory review shall not be granted under this paragraph (b)(4) unless the Board determines that the

Administrative Law Judge's failure to certify the matter was clearly erroneous.

(c) *Certification by Administrative Law Judge.* (1) Any party may move that the Administrative Law Judge certify and permit an appeal of a contested ruling to the Board. Such a motion shall be served within 10 days of the Administrative Law Judge's notification to the parties of the contested ruling; *provided*, however, that if such a motion is made during the hearing, the Administrative Law Judge may permit the motion and responses thereto to be made orally. The motion for certification must state the grounds relied upon, including the reasons for permitting the interlocutory review, in accordance with the criteria set forth in paragraph (c)(2) of this section. Any party may serve a response to a motion for certification within 10 days after service of the motion.

(2) The Administrative Law Judge shall certify a ruling for interlocutory review to the Board only upon a motion by a party and a determination by the Administrative Law Judge that (i) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion and (ii) an immediate appeal from the ruling may materially advance the ultimate conclusion of the proceeding. Any certification to the Board shall be in writing and shall set forth the relevant issues, an explanation of the ruling on the issues, and specific reasons for the granting of the moving party's request for review by the Board.

(d) *Procedure.* Where certification is not required under paragraph (b) of this section or where the Administrative Law Judge certifies a ruling for interlocutory review by the Board, or where a party believes that a denial of certification by the Administrative Law Judge was clearly erroneous, a petition for interlocutory review may be filed within 10 days after notice of the Administrative Law Judge's ruling or certification. The petition shall include or have attached thereto a copy of the ruling or portion thereof from which appeal is being sought and present the points of fact and law relied upon in support of the position taken. Any party may serve a response to a petition for interlocutory review within 10 days of service of the petition. The Board shall determine whether to grant interlocutory review based upon the petition for review and any responses thereto without oral argument or further written submission unless the Board shall otherwise direct.

(e) *Dismissal of interlocutory appeal by the Board.* The Board shall dismiss

an interlocutory appeal of the Administrative Law Judge's certification was erroneously granted or if it finds that prompt consideration of the appeal is not warranted under the standards set forth above in paragraph (c)(2) of this section.

(f) *Notification by the Secretariat.* The Secretariat shall notify the Administrative Law Judge and the parties to the proceeding when a petition for interlocutory review has been submitted to the Board and of the Board's decision on the petition.

(g) *Suspension of proceeding.* Neither a motion to the Administrative Law Judge for interlocutory review, nor a petition to the Board for interlocutory review, nor the granting of such a motion or petition under this section shall suspend or stay the proceeding unless otherwise ordered by the Administrative Law Judge or the Board. Any stay of longer than 30 days must be specifically approved by the Board.

§ 509.19 Prehearing conference and exchange of information.

(a) *Prehearing conference.* The Administrative Law Judge may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing (in person or by telephone) and/or submit prehearing memoranda to him in writing, to address any or all of the following:

- (1) Simplification and clarification of the issues;
- (2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;
- (3) Matters of which official notice will be taken;
- (4) Limiting the number of witnesses; and
- (5) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Witnesses.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for hearing, each party shall serve a written list of witnesses to be called to testify at hearing. The list shall contain the name and address of each witness and a brief summary of the testimony expected of each witness. The Administrative Law Judge shall not allow any witness to testify at the hearing who is not included on any party's witness list, except for good cause shown.

(c) *Exhibits.* Within a period of time established by the Administrative Law Judge and prior to the date scheduled for hearing, each party shall serve a written list of exhibits to be offered into

evidence at hearing together with a copy of each proposed exhibit. The Administrative Law Judge shall not allow any exhibit to be accepted into evidence at the hearing that is not listed and copied in accordance with the provisions of this paragraph except for good cause shown.

(d) *Prehearing brief.* Any party may serve, and the Administrative Law Judge may require all parties to serve, a prehearing brief or legal memorandum in advance of the hearing date.

(e) *Prehearing order.* At or within a reasonable time following the conclusion of a prehearing conference, the Administrative Law Judge shall file with the Secretariat and serve upon each party a prehearing order setting forth agreements reached and any procedural determinations made. Any agreements reached among the parties at the prehearing conference or otherwise, shall become part of the record and shall be binding on the parties unless the Administrative Law Judge permits otherwise for good cause shown.

§ 509.20 Opportunity for informal settlement.

(a) Any respondent may at any time unilaterally submit to the Secretariat, for consideration by the Board or its designee, with copies to all other parties, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. Other parties to the proceeding may respond to the settlement offer within 20 days of service of such settlement offer. Unless the Office of Enforcement recommends to the Board or its designee that it accept the submitted settlement offer, submission of a settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this subpart. No such settlement offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding.

(b) Upon receipt of a settlement offer, the Board, its designee, or any person selected by the Board or its designee may consult with the parties about the settlement offer by convening a settlement conference with the parties or by requiring the submission of additional information as the Board or such other person may deem appropriate for consideration of the settlement offer.

(c) The Board shall notify the parties of its decision whether to accept the settlement offer within 60 days of its receipt of such settlement offer.

§ 509.21 Stipulations.

The parties shall by stipulation in writing prior to the hearing agree upon as many pertinent facts as practicable, and may also do so orally at the hearing. When stipulations are accepted by the Administrative Law Judge, they shall be binding on the parties.

§ 509.22 Subpoenas for documentary or physical evidence or for witness attendance.

(a) *Issuance.* The Administrative Law Judge shall issue subpoenas, as authorized by law, at the request of any party, requiring the attendance of witnesses at the hearing to be held in connection with an adjudicatory proceeding and/or the production of documentary or physical evidence at such hearing. Where it appears to the Administrative Law Judge that the subpoena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the Administrative Law Judge, after consideration of all the circumstances, determines that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it in modified form upon such conditions as justice requires.

(b) *Motion to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date of service of such subpoena, serve a motion, in accordance with the provisions of § 509.17 of this part, to revoke, quash, or modify such subpoena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpoena.* The party seeking the subpoena is responsible for effecting service thereof. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena by personal service, certified or registered mail, or an express delivery service to such person and by tendering the fees for one day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpoena is issued at the instance of the Office of Enforcement, fees and mileage need not be tendered at the time of service of the subpoena. If service is made by a United States Marshal, his deputy, or an employee of the Board, such service shall be

evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpoena issued in connection with a hearing provided for in this part may be required from any place in any State, Commonwealth, possession, territory, or the District of Columbia at any designated place where the hearing is being conducted. Witnesses subpoenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

§ 509.23 Depositions.

(a) *Scope of rule.* This section shall apply in adjudicatory proceedings under this part and Part 565, and under § 583.26(d) of this chapter.

(b) *Prerequisites.* Oral depositions shall be permitted only upon a showing that:

(1) The proposed deponent is or is likely to be unavailable to attend the hearing because of age, illness, infirmity or other cause;

(2) The testimony of the proposed deponent will be relevant to the proceeding; and

(3) The taking of the deposition will not result in any undue burden to any other party or in undue delay in the proceeding.

(c) *Procedure.* Any party desiring to take the oral deposition of a witness shall serve a written motion setting forth facts sufficient to demonstrate that the prerequisites set forth in paragraph (b) of this section have been satisfied. The motion shall include the name and address of the proposed deponent and a statement setting forth the matters upon which the proposed deponent will be questioned, the materiality and relevance of the deponent's testimony, the need for the deposition, and the proposed time and place for the deposition. Any party may serve a response to the motion within 10 days after service thereof. Failure of a party to respond to such a motion within 10 days will be deemed to constitute a waiver of objection to the deposition.

(d) *Decision.* Upon a showing that the prerequisites set forth in paragraphs (b)(1), (2), and (3) of this section have been satisfied, the Administrative Law Judge may, by subpoena or subpoena duces tecum, order that such oral deposition be taken. If, after consideration of all circumstances, the Administrative Law Judge determines

that the deposition or its location, in whole or in part, is unnecessary, unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to grant the motion or may grant it only upon such conditions as justice requires. The Administrative Law Judge shall serve a notice of the action taken on the motion upon each of the parties. Service shall be accomplished under the procedures of § 509.9 of this part. Service shall be completed at least 10 days in advance of the date and time fixed for the taking of the deposition.

(e) *Motion to quash.* A person named in a subpoena or subpoena duces tecum to take evidence by oral deposition who is not a party to the proceeding may move to revoke, quash, or modify the subpoena. Such motion shall be accompanied by a statement of the reasons therefor and a copy of the motion shall be served upon the party requesting the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than 10 days after the date of service of the subpoena, except for good cause shown.

(f) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and all other parties shall have the right to cross-examine. Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. The objection shall be noted in the transcript and the deponent shall answer the question subject to the objection, unless a valid privilege is asserted. If the deponent refuses to answer a question posed at a deposition, the deposition may be adjourned or completed at the option of the party who requested the deposition, except as to the unanswered question, and an oral or written request may be made to the Administrative Law Judge to compel an answer.

(g) *Protective orders.* At any time during the taking of a deposition, on motion of the deponent or of any party, and upon a showing that the deposition is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Administrative Law Judge may order the termination of the deposition or may limit the scope and manner of the taking of the deposition. Grounds for terminating or limiting a deposition include persistent questioning on privileged matters, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, or unwarranted attempts to pry into a party's preparation for trial. The physical condition of the witness and

the adequacy of the examination which has already taken place also may be considered.

(h) *Introduction as evidence.* If the deposition or any portion of the deposition is offered at the hearing, the Administrative Law Judge shall then consider any objections raised, provided that those objections were made during the deposition and, at the time, may refuse to allow reading of the answer to any question found to be objectionable. Subject to appropriate rulings on such objections to question or evidence as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be submitted into evidence by any party to the proceeding. Only that part of a deposition that is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(i) *Payment of fees.* The fees of the witness and of the reporter shall be paid by the person upon whose application the deposition was taken.

§ 509.24 Conduct of hearings.

(a) *Hearing rules.* Every party shall have the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination as may be required for full disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to the admission or exclusion of evidence shall be concise and, together with rulings thereon, become part of the record. Argument on objections may, at the discretion of the Administrative Law Judge, take place off the record. Failure to object to admission or exclusion of evidence or to any ruling shall constitute a waiver of the objection. The privileges of witnesses or parties shall be governed by the principles of the common law as such principles may be interpreted by the courts of the United States in light of reason and experience.

(b) *Official notice.* Official notice may be taken of any material fact that might be judicially noticed by a district court of the United States and of any material information in the official public records of the Board. All matters officially noticed by the Administrative Law Judge shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available to any party upon payment of the cost thereof. A copy of

the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits, shall be filed with the Administrative Law Judge, who shall file such materials with the Secretariat at the time he submits his recommended decision. The Administrative Law Judge shall have the authority to rule upon motions to correct the record.

(d) *Continuances and changes or extensions of time and changes of place of hearing.* Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27 of this part, except as otherwise expressly provided by law, the Board may in the notice or any subsequent order provide time limits different from those specified in this part any may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice, or change the time and place for any hearing hereunder. The Administrative Law Judge may, as permitted by law, change the time for beginning any hearing, continue or adjourn a hearing from time to time, and change the location of the hearing.

(e) *Call for further evidence, oral arguments, briefs, or reopening of hearing.* The Administrative Law Judge may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at or following the hearing, and, upon appropriate notice, may reopen the hearing at any time prior to the filing of his recommended decision with the Secretariat.

§ 509.25 Private and public hearings.

(a) All hearings shall be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceeding unless the Board determines that a public hearing should be held pursuant to this section. Unless an exception is granted by the Administrative Law Judge in response to a motion by a party, all witnesses shall be sequestered.

(b) Unless otherwise ordered by the Board as provided in paragraph (c) of this section or required by law, the entire record in any proceeding under this part, including, but not limited to, the notice, answer, the transcript, exhibits, proposed findings of fact and conclusions of law, briefs, recommended decision of the Administrative Law Judge, exceptions thereto, the decision and order of the Board, and any other papers and documents that are filed in connection with the proceeding shall not be made public, and shall be for the

confidential use only of the Board and its staff, the Administrative Law Judge, the parties, and appropriate supervisory authorities.

(c) Where the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Board may order that the hearing be public.

§ 509.26 Summary disposition.

(a) *Filing of motions and responses.* Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law may move for summary disposition in his favor of all or any part of the proceeding. Such motion may be filed at any time. Any party, within 20 days after service of such a motion, or within such further time period as the Administrative Law Judge may allow, may serve an opposition to such motion and/or may countermove for summary disposition. Following receipt of a motion for summary disposition and all responses thereto and any further written submissions and/or oral argument he deems appropriate, the Administrative Law Judge shall submit a recommended decision to the Board in accordance with the provisions of § 509.27(c) and of paragraph (d) of this section if he finds that summary disposition is warranted. No such recommended decision need be filed with the Board if the Administrative Law Judge finds that no party is entitled to summary disposition. If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, he may defer submitting a recommended decision as to those claims until he files his recommended decision at the conclusion of the hearing. If the Administrative Law Judge determines that a party is entitled to an order based on the presence in one transaction or occurrence of all statutory elements necessary to support such an order, he may recommend that the Board issue such an order based on such transaction or occurrence even though he may make no such finding with respect to other transactions or occurrences contained in the notice.

(b) *Supporting papers.* A motion for summary disposition shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue, supported by documentary evidence, admissions in pleadings, stipulations, depositions, and any other evidentiary materials that the moving party contends supports his position. The motion shall also be accompanied by a

brief containing the points and authorities in support of the contention of the party making the motion. Any party opposing a motion for summary disposition shall file a statement setting forth those material facts as to which he contends a genuine dispute exists, supported by evidence of the same type required to be submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate. A party opposing a motion for summary disposition may argue that, although there is no dispute as to the material facts, the law is unclear or contrary to the position urged by the moving party or that the circumstances are such that a different remedy or result is appropriate. In this event, the party's submission shall clearly set forth such legal differences or circumstances and a discussion of the appropriate result or remedy.

(c) *Hearing on motion.* At the request of any party or *sua sponte*, the Administrative Law Judge may convene a hearing on any motion for summary disposition for the purpose of receiving oral argument on the motion.

(d) *Recommended decision on motion.* The Administrative Law Judge shall recommend that the Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, stipulations, documentary evidence, deposition transcripts, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with the motion show that:

- (1) There is no genuine issue as to any material fact;
- (2) There is no necessity that further facts be developed on the record; and
- (3) The moving party is entitled to a decision in his favor as a matter of law.

§ 509.27 Proposed findings of fact and conclusions of law and recommended decision.

(a) *Proposed findings of fact and conclusions of law.* Each party shall have a period of 30 days after the submission of the hearing transcript to the Administrative Law Judge following the close of the hearing to serve proposed findings of fact and conclusions of law, which may be accompanied by a brief in support thereof. Such proposals shall be supported by citation of such statutes, decisions and other authorities, and page references to such portions of the record as may be relevant. Each party may serve a reply brief within 20 days of

service of the other parties' proposed findings of fact and conclusions of law and accompanying briefs. All such proposals and briefs shall become a part of the record.

(b) *Recommended decision and filing of record.* The Administrative Law Judge shall, within 30 days after the expiration of the time allowed under paragraph (a) of this section, or within such further time as the Board for good cause may allow, file with the Secretariat and certify to the Board for decision the entire record of the hearing, which shall include his recommended decision in accordance with § 557 of Title 5 of the United States Code, the transcript, and the exhibits (including, on request of any of the parties, any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all pleadings, briefs and other materials filed in connection with the hearing. Promptly upon such filing, the Secretariat shall serve upon each party to the proceeding a copy of the recommended decision. The provisions of this paragraph (b) shall not apply in any case where the hearing was held before the Board.

§ 509.28 Briefs.

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each proposed finding of fact, conclusion of law, or exception that is briefed shall be supported by a concise argument and by citation of such statutes, decisions, and other authorities and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Reply briefs.* Reply briefs may be served within 20 days after service of original briefs of opposing parties, or such further time as the Administrative Law Judge may permit, and shall be confined to matters in opening briefs. Further briefs may be filed only with the express permission of the Administrative Law Judge.

(c) *Delayed filing.* Briefs not served on or before the time fixed in this part will be received only upon special permission of the Administrative Law Judge.

§ 509.29 Exceptions.

(a) *Filing.* Within 30 days after service of the recommended decision of the Administrative Law Judge or such further time as the Board for good cause shall allow, any party (other than a party who has not filed an answer in accordance with § 509.14(a)), may serve and file with the Secretariat exceptions

thereto or to any portion thereof, or to the failure of the Administrative Law Judge to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge supported by such brief as may appear advisable.

(b) *Waiver.* Failure of a party to serve and file exceptions to the recommended decision of the Administrative Law Judge or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge within the time allowed under paragraph (a) of this section, shall be deemed to be a waiver of objection thereto.

§ 509.30 Oral argument before the Board.

Upon the Board's own initiative or upon the written request of any party made within the time for filing exceptions to the recommended decision or such part thereof of the Administrative Law Judge, the Board or its designee(s) may order and hear oral argument on all or any part of the recommended decision and the findings and conclusions on which the recommended decision or such part thereof is based. Such written request must show good cause for oral argument, including reasons why arguments have not been, or cannot be, presented adequately in writing. Oral argument before the Board shall be recorded by the Secretariat.

§ 509.31 Notice of submission to the Board.

Upon the filing of the record with the Secretariat, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the Board, and upon the hearing of any oral argument ordered by the Board, the Secretariat shall notify the parties in writing that the case has been submitted to the Board for final decision.

§ 509.32 Decision of the Board.

(a) Employees of the Board who have not engaged in any way in the performance of investigatory or adjudicatory functions in connection with a proceeding may advise and assist the Board in the consideration of the proceeding. The Board shall consider the recommended decision and the whole record on review and shall base its determination thereon.

(b) The Board shall render its final decision within 90 days after the Secretariat has notified the parties, pursuant to § 509.31 of this part, that the

case has been submitted to the Board for final decision, unless within such 90-day period the Board shall order that such notice be set aside and the case reopened for further proceedings. Copies of the decision and order of the Board shall be served by the Secretariat upon each party to the proceeding and, if directed by the Board or required by statute, upon any appropriate State supervisory authority.

Subpart B—Assessment of Civil Money Penalties

§ 509.33 Scope.

The rules and procedures in this subpart and in subpart A shall apply to proceedings under section 407(k)(3) of the NHA, 12 U.S.C. 1730(k)(3), section 408(j)(4)(C) of the NHA, 12 U.S.C. 1730a(j)(4)(C), and section 5(d)(8)(B) of the HOLA 12 U.S.C. 1464(D)(8)(B), to determine whether and/or to what extent civil penalties should be assessed against insured institutions, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof, and/or related officials in violation of any order issued under the Board's cease-and-desist authority or any provision of section 408 of the NHA, 12 U.S.C. 1730a *et seq.* or any regulation (see Parts 583 and 584 of this Subchapter F of this Chapter) or order issued pursuant thereto.

§ 509.34 Notice of assessment; request for hearing; answer.

Proceedings to assess civil money penalties shall be commenced by service of a notice of assessment of civil money penalty. The notice shall contain a statement of the facts constituting the grounds for the assessment of the penalty, the amount of the civil money penalty being assessed, and the date by which the penalty must be paid and shall inform the party being assessed of its right to request a hearing to challenge the assessment of the penalty within 10 days of service of the notice. If a hearing is not requested within the prescribed 10-day period, the assessment shall constitute a final and unappealable order of the Board. A party requesting a hearing shall file an answer as prescribed in § 509.14.

§ 509.35 Notice of hearing.

A party requesting a hearing shall be informed by notice of the time and place set for the hearing. The notice of hearing shall be served at least 30 days in advance of the date set for the hearing and shall order the hearing to commence within 60 days after receipt of the request for a hearing. Any party afforded a hearing who does not appear

at the hearing personally or through a duly authorized representative shall be deemed to have consented to the issuance of an assessment order.

§ 509.36 Assessment orders.

In the event of consent, or if upon the record developed at the hearing, the Board finds that any of the grounds specified in the notice of assessment has been established, the Board may serve an order of assessment of civil money penalty upon the party concerned. An assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Board or by a reviewing court.

§ 509.37 Payment of civil penalty.

(a) Civil penalties assessed pursuant to this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Board fixes a different time for payment where it determines that the purpose of the penalty would be better served thereby; *provided*, however, that if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party shall not be required to pay such penalty until the Board has issued a final order of assessment following the hearing. In such cases, the penalty shall be paid within 60 days of service of such order unless the Board fixes a different time for payment.

(b) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Comptroller's Division of the Board. Upon receipt, the Board shall forward the check to the Treasury of the United States.

§ 509.38 Relevant considerations.

In determining the amount of the penalty to be assessed in any proceeding under this part, the Board shall consider the financial strength and good faith of the party against whom the penalty is to be assessed, the gravity of the violation, any previous violations, and such other matter as justice may require.

PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

2. The authority citation for Part 512 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended, 12 U.S.C. 1437; sec. 5, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 402, 407, 48 Stat. 1256, 1260, as amended, 12 U.S.C. 1725,

1730; sec. 408, 82 Stat. 5, as amended, 12 U.S.C. 1730a; sec. 12, 48 Stat. 892, as amended, 15 U.S.C. 78f; Reorg. Plan. No. 3 of 1947; 3 CFR 1943-1948 Comp.

3. Revise § 512.1 to read as follows:

§ 512.1 Scope of part.

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 408(h)(2) of the National Housing Act, *as amended*, 12 U.S.C. 1730a(h)(2) ("Act") and to the conduct of formal examination proceedings with respect to insured institutions and their affiliates under section 407 (m)(2) or (q)(16) of the Act, *as amended*, 12 U.S.C. 1730 (m)(2) or (q)(16). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in Part 509 of this subchapter.

4. Amend § 512.2 by revising paragraph (c) to read as follows:

§ 512.2 Definitions.

(c) "Formal examination proceeding" means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examinations of insured institutions and their affiliates conducted pursuant to section 407 (m)(2) or (q)(16) of the Act; and

5. Revise § 512.3 to read as follows:

§ 512.3 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the Board, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the Board, or required by law, and except as provided in §§ 512.4 and 512.5, the entire record of any investigative proceeding or formal examination proceeding, including the Board or Enforcement Review Committee resolution authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated representative(s) during the course of said proceedings shall be confidential.

6. Revise § 512.4 to read as follows:

§ 512.4 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated

representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; *provided*, that in a private proceeding, a person seeking a transcript of his own testimony must file a written request with the Director or any Deputy Director of the Office of Enforcement stating the reason he desires to procure such transcript, and said persons may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness' own testimony.

7. Amend § 512.5 by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 512.5 Rights of witnesses

(b)

(1) Such attorney shall be a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Board in accordance with the provisions of Part 513 of this subchapter, and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of the testimony of any other witness called in such proceeding. Neither attorney(s) for the institution(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

§ 512.5 [Amended]

8. Amend § 512.5 by removing paragraph (c).

9. Revise § 512.7 to read as follows:

§ 512.7 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Director or any Deputy Director of the Office of Enforcement to quash or modify such subpoena, accompanying such application with a statement of the reasons therefor. The Director or the Deputy Director, as the case may be, may:

- (1) Deny the application;
- (2) Quash or revoke the subpoena;
- (3) Modify the subpoena; or
- (4) Condition the granting of the application on such terms as the Director or Deputy Director determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.*

Subpoenas issued in connection with any investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals

are subject to such subpoena if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 88-23813 Filed 10-14-88; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Parts 522, 541, 542, 543, 544, 545, 547, 548, 549, 569a, 569b, and 569c

[No. 88-1114]

Extension of Time Period for Board Action on Certain Outstanding Proposals

Date: October 11, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rules; extension of time period for board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88-269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible Board action on the following outstanding proposed regulations as outlined in **SUPPLEMENTARY INFORMATION**. The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by these proposals. It is not soliciting additional comments on these proposals.

DATE: October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-6445, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 or the appropriate contact persons listed in the reference **Federal Register** documents.

SUPPLEMENTARY INFORMATION: The following are outstanding proposals on which the comment period has been closed for more than six months but which the Board still has under active consideration for possible further action. The Board is hereby extending the time for possible final Board action on each of these proposals to the dates indicated below:

December 1, 1988

1. Conservators and Receivers, adopted by the Board on November 8, 1985; 50 FR 48970 (Nov. 27, 1985);
2. Indemnification of FHLBank Officers, Directors, and Employees, adopted by the Board on April 1, 1987; 52 FR 12425 (April 16, 1987).

January 11, 1989

1. Corporate Governance Part I, adopted by the Board on September 13, 1985; 50 FR 38832 (Sept. 25, 1985);
2. Corporate Governance Part II, adopted by the Board on November 22, 1985; 50 FR 52482 (Dec. 24, 1985).

The Board notes that this action does not constitute a representation that the Board will take final action with respect to these proposals, only that it may do so within the respective extensions of time for each proposal. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposals listed here.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-23910 Filed 10-14-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-11]

Petition for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended

to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 16, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 6, 1988.

Denise D. Hall,
Manager, Program Management Staff.

Petitions for Rulemaking

Docket No: 25453

Petitioner: Air Transport Association of America (ATA)

Regulations Affected: 14 CFR Section 21.621

Description of Petition: The petition, if granted would require that any new TSO or amendment, revisions or revocation of an existing TSO which revokes or substantially changes an existing TSO, would be subject to the rulemaking provisions of Subpart C of 14 CFR Part 11.

Petitioner's Reason for the Rule: ATA contends that a TSO is a form of a "license" and that when the FAA substantially amends or revokes an existing TSO by a TSO revision, it takes away this license and the right to build or use the equipment covered by the existing TSO and in so doing effectively eliminates property rights and impairs contracts between affected parties.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, deposition
23936	Westinghouse Defense & Electronics Systems Company (formerly TCOM Corporation).	§ 101.13(a)(2) & (4)	Petitioner wants a renewal of an exemption from Section 101.13(a)(2) & (4) of the Federal Aviation Regulations (FAR) to permit operation of a moored balloon more than 500 feet above the surface of the earth and within 5 miles of the boundary of an airport, at a location approximately 3 nautical miles southeast of the Elizabeth City Coast Guard Air Station, North Carolina. <i>Granted:</i> September 12, 1988.
045CE	Fairchild Aircraft Corporation	§§ 23.53(c)(6), 23.67(e)(1)(i).	Petitioner petitioned for exemption from Federal Aviation Regulations (FAR) to extent necessary to certify their Mode SA227-CC Metro IIIC airplane in the commuter category based, in part, on previous FAA approval of compliance with the ICAO Annex 8 provisions of SFAR 41. <i>Denial of Exemption:</i> August 5, 1988.
046CE	British Aerospace	§§ 23.471, 23.473, 23.477, 23.479, 23.481, 23.483, 23.485, 23.493, 23.497, 23.499, 23.505, 23.509, 23.511, 23.721, 23.723, 23.725, 23.726, 23.727, 23.729, 23.733, 23.735 and 23.737.	Petitioner petitioned for exemption from certain ground loading and landing gear requirements to Part 23 to permit certification of their Jetstream 3200 Series airplanes in the commuter category while meeting certain transport category ground load and landing gear requirements. <i>Grant of Exemption:</i> August 24, 1988.
25448	British Aerospace	§ 91.123(c)(2)	Petitioner petitioned for exemption from Part 91, paragraph 91.123(c)(2) of the Federal Aviation Regulations (FAR), 14 CFR 91.123(c)(2). The requested exemption would permit a specific version of the BAe ATP turboprop transport aircraft certificated for a maximum seating capacity of 60 passengers to be operated using commuter slots at the 4 high density airports. Commuter slots currently are limited by regulations to aircraft having a certified passenger capacity of less than 56 seats. (FAR § 91.123(c)(2)). <i>Denial of Exemption:</i> August 15, 1988.

[FR Doc. 88-23867 Filed 10-14-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-ANE-44]

Airworthiness Directives; Pratt and Whitney (PW) JT9D-59A, -70A, -7Q, and -7Q3 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that

would require initial and repetitive eddy current inspections (ECIs) of the high pressure turbine (HPT) first stage disk cooling air holes, in accordance with PW Service Bulletin (SB) 5744, and removal from service of disks that have developed cracks. The proposed AD is needed to prevent an uncontained HPT first stage disk failure.

DATE: Comments must be received on or before November 22, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 86-ANE-44, 12 New England Executive

Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 86-ANE-44".

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable SB may be obtained from Pratt and Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket No. 86-ANE-44, in the Office of

the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 86-ANE-44". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that five HPT first stage disks have been found cracked to date. The cracks were found during routine fluorescent penetrant inspections (FPI) of the disk cooling air holes which were carried out during engine shop visits. The cracks initiated at the highest stressed location (life limiting location) on the disk which is at the cooling hole bore, and propagated in low cycle fatigue (LCF) mode to a maximum crack length of approximately 0.065 inches. The cracks were caused by a severely worked layer of material on the surface attributed to improper machining of the cooling air holes during the manufacturing process. Since the geometry of the location where the cracks develop makes it difficult to

detect small cracks by utilization of FPI, an ECI is necessary to detect any existing small cracks and remove defective disks from service. A special ECI probe has been developed specifically for this inspection, and is made available by the engine manufacturer.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require initial and repetitive ECIs of the HPT first stage disk.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation involves approximately 597 engines at an approximate total cost of \$200,000. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using Boeing 747 and McDonnell Douglas DC-10-40 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this section (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 FR Part 39

Engines, Air transportation, Aircraft, Aviation safety Incorporation by reference.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to

amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained high pressure turbine (HPT) first stage disk rupture, eddy current inspect (ECI) the forty cooling air holes on disk Part Numbers (P/N) 788001, 792701, 812901, and 819801, in accordance with Accomplishment Instructions of PW Service Bulletin (SB) 5744, dated April 10, 1987, as follows:

(a) ECI HPT first stage disks that have never been fluorescent penetrant inspected as follows:

(1) Disks with 3,500 total cycles in service or more on the effective date of this AD, prior to accumulating 5,000 total cycles in service or prior to accumulating the next 750 cycles in service after the effective date of this AD, whichever occurs later.

(2) Disks with less than 3,500 total cycles in service on the effective date of this AD, prior to accumulating 5,000 total cycles in service.

(b) ECI HPT first stage disks, that have been previously fluorescent penetrant inspected (FPI), prior to accumulating the next 3,500 cycles in service since the last FPI accomplished in accordance with PW Engine Manual 777210, Section 72-51-06, Inspection 01, for the JT9D-7Q and -7Q3, or in accordance with PW Engine Manual 754459, Heavy Maintenance Section 72-51-02, Check-1, for the JT9D-59A and -70A, as applicable; or prior to accumulating the next 250 cycles in service after the effective date of this AD, whichever occurs later.

(c) Eddy current reinspect HPT first stage disks thereafter at intervals not to exceed 3,500 cycles in service since the last ECI.

(d) Remove from service, prior to further flight, disks found cracked during the above inspections and replaced with serviceable parts.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.97 and 21.199 to a base where the AD can be accomplished.

(f) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, Engine and Propeller

Directorate, Aircraft Certification Service, may adjust the compliance time specified in this AD.

Should this proposed rule be adopted, the FAA will request the approval of the office of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on October 5, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate Aircraft Certification Service.
[FR Doc. 88-23872 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 83-AWA-26]

Proposed Department of Energy Prohibited Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: This notice withdraws the Advance Notice of Proposed Rulemaking (ANPRM), Airspace Docket No. 83-AWA-26, which was published in the Federal Register on February 8, 1984. That ANPRM proposed to establish and/or modify prohibited airspace areas at nine Department of Energy (DOE) nuclear facilities located at Aiken, SC; Golden, CO; Idaho Falls, ID; Los Alamos, NM; Oak Ridge, TN; Richland, WA; San Francisco, CA; Livermore, CA, and Amarillo, TX.

EFFECTIVE DATE: 0901 u.t.c. October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

The Proposed Rule

On February 8, 1984, an Advance Notice of Proposed Rulemaking (ANPRM) was published in the Federal Register to establish new, or to modify existing prohibited areas at nine Department of Energy (DOE) nuclear facilities (49 FR 4765). The ANPRM proposed to establish these prohibited areas at the request of DOE to enhance security at the listed DOE sites.

However, alternative measures have been taken to address security concerns and DOE has withdrawn its request. Accordingly, this docket action is no longer necessary.

List of Subjects in 14 CFR Part 73

Aviation safety, Prohibited areas.

Withdrawal of ANPRM

Accordingly, pursuant to the authority delegated to me, the Advance Notice of Proposed Rulemaking, Airspace Docket No. 83-AWA-26, as published in the Federal Register on February 8, 1984 (49 FR 4765) is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on October 6, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23873 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-AGL-20]

Proposed Alteration of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-522 by extending it from Green Bay, WI, to Fargo, ND, via Brainerd, MN. This jet route would shorten the distance to the Dakotas and other areas to the west. This action would save fuel.

DATES: Comments must be received on or before November 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88-AGL-20, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of J-522 by extending it from Green Bay, WI, to Fargo, ND, via Brainerd, MN. Currently, aircraft are given radar vectors between those points. This change would provide a charted route for an area radar vectors are normally provided. This action would reduce fuel consumption. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-522 [Amended]

By removing the words "From Green Bay, WI, via" and substituting the words "From Fargo, ND; Brainerd, MN; Green Bay, WI;"

Issued in Washington, DC, on October 4, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23874 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-13-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 211

Enforcement Procedures

AGENCY: U.S. International Trade Commission.

ACTION: Proposed rules and request for comments.

SUMMARY: The Commission is proposing to revise Part 211 of the Commission's Rules of Practice and Procedure. Part 211 sets forth rules governing enforcement procedures, consent orders, and advisory opinions relating to Commission investigations conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

The amendments to Part 211 provide, in particular, for streamlining the procedure for issuing consent orders; for formalizing the procedure for issuing advisory opinions; for clarifying the procedure for modifying or dissolving exclusion orders, cease and desist orders, and consent orders; and for the elimination of obsolete, redundant, inapt, and unclear terminology.

DATES: Comments will be considered if received by December 1, 1988.

ADDRESSES: All comments concerning the proposed rules should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20136.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1102. Hearing impaired individuals may obtain further information on this matter by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C., 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties. It should be noted that this rulemaking is distinct from the interim rules promulgated to implement the amendments to section 337 effected by the Omnibus Trade and Competitiveness Act of 1988, which

were published in the Federal Register on August 29, 1988 (53 FR 33043). However, the proposed rules contained in this notice incorporate the changes made to 19 CFR Part 211 by the interim rules.

The Commission has determined that the proposed revisions do not constitute a major rule for the purposes of Executive Order 12291, because they do not fall within the categories described in section 1(b) of the EO.

Explanation of Proposed Revisions to 19 CFR Part 211

Section 211.01

Section 211.01 is amended to replace the reference to "final Commission actions" by the more specific "exclusion orders, cease and desist orders, and consent orders." The same amendment is made in other sections.

Section 211.10

Subpart A and § 211.10 are deleted. The section is (1) vague in its description of the procedure contemplated and (2) unnecessary in view of the fact that it has never been used. Subparts B and C are redesignated Subparts A and B.

Section 211.20

Section 211.20 is amended to provide for submission of proposed consent orders prior to institution of an investigation under section 337 only during proceedings under section 603 of the Trade Act of 1974 (19 U.S.C. 2482). The change is proposed in order to simplify standard preinstitution procedure. The term "presiding official" is replaced by the term "administrative law judge." The word "proposed" modifying "consent order agreement" is deleted because the agreement exists between the parties even before the Commission considers it. Section 211.20 is also amended to eliminate as unnecessary the provision for issuing a Federal Register notice upon the Commission's receipt of an initial determination concerning termination of an investigation on the basis of a consent order.

Section 211.20 is also amended to streamline the consent order process by eliminating the requirement that complainant and the Commission investigative attorney must participate in the filing of a motion to terminate an investigation on the basis of a consent order. The Commission is particularly interested in receiving comments on the legal and practical consequences of this proposed amendment.

Section 211.21

Section 211.21 is amended to eliminate as unnecessary the requirement that the Commission give reasons for issuing a consent order. This provision is unnecessary because the Commission normally issues every consent order for the same reasons, *i.e.*, the consent order complies with the Commission's rules and is not inappropriate in view of the public interest factors listed in § 211.21. The phrase "reject the proposed agreement" is replaced by "reverse the initial determination" to conform to Commission procedure.

Section 211.22

Section 211.22 is amended to require each consent order agreement to specify that the agreement will not apply to intellectual property rights that have expired or been found invalid or unenforceable, if the finding has been upheld on appeal or the time for appeal has expired. This amendment recognizes that the Commission does not order relief based on invalid or unenforceable intellectual property rights. The Commission considers, as part of its determination on the public interest, whether the issuance of a consent order is appropriate if a finding of noninfringement or of no violation of section 337 has been made. Section 211.22 is also amended to change the reference to respondent's admission of violation of section 337 to admission that an unfair act has been committed, since the elements of violation other than the unfair act are typically matters for the Commission's decision, not respondent's admission. The second sentence of § 211.22(b) is deleted as unnecessary, because the Commission construes the terms of consent orders according to general principles of contract law.

Section 211.50

Section 211.50 is amended to delete paragraphs (b) and (c) and most of (a) as unnecessary, and to retitle the section "Applicability." The proposed amendments apply to outstanding and future exclusion orders, cease and desist orders, and consent orders, but not to ongoing enforcement proceedings.

Section 211.51

Section 211.51 is revised to remove as unnecessary the second sentence of paragraph (b) and the last sentence of paragraph (d). The beginning of paragraph (d) is reworded to eliminate the reference to Commission approval of consent orders, since the Commission does not approve consent orders, but rather agrees to issue them.

Section 211.52

Section 211.52 is reissued without revision.

Section 211.53

Section 211.53 is amended to remove the last clause of paragraph (a) as unnecessary.

Section 211.54

Except for paragraph (a), which is deleted because the Commission does not in practice give the subject advice, § 211.54 is moved to the end of Part 211 and into a new Subpart C. The rule, renumbered § 211.59, is identical to the existing § 211.54(b) and (c) except for the following changes. The amendments eliminate the restriction that only respondents can request an advisory opinion, to bring the rule into line with Commission practice. Also eliminated, as unnecessary, are the word "new" in the first sentence of paragraph (b) and the words "rescind" and "rescission" in paragraph (c). The phrase "or section 337" is deleted from the first sentence of paragraph (b) to preserve the limited scope of advisory opinions, which have in practice addressed the coverage of orders rather than issues concerning violation such as patent validity or the existence of a domestic industry. The amendments add to the end of paragraph (b) the first two duties imposed by the Commission on requesters of advisory opinions in Inv. No. 337-TA-68, *Certain Surveying Devices*. As to the third criterion of *Surveying Devices*, the Commission continues to require that the requester of an advisory opinion fully state its request in its first submission to the Commission, since the Commission does not wish to issue *seriatim* advisory opinions to the same requester on the same subject. Finally, the amendments add a statement that advisory opinion proceedings are not subject to specified sections of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). This last change is made to stress that advisory opinion proceedings may be less formal than full investigations under section 337, are limited in scope to advice concerning existing Commission orders, and do not result in a determination of violation of section 337.

Section 211.55

Section 211.55 is renumbered § 211.54, retitled more appropriately "Modification of reporting requirements," and amended to extend its coverage to exclusion orders, in order to cover the eventuality that information requirements are imposed in exclusion orders. The phrase "proposed modified"

is deleted as incorrect, since the reference should be the original consent order.

Section 211.56

Section 211.56 is renumbered § 211.55 and amended to rearrange its paragraphs in a more logical order, starting with informal proceedings (current paragraph (a)), following with formal proceedings (current paragraph (c)), and ending with court proceedings (current paragraph (b)). The paragraph on formal proceedings is amended to permit the institution of an enforcement proceeding after the filing of a complaint by the complainant in the original investigation or by the Commission on its own initiative. A notice of institution, rather than the entire complaint, would be published in the *Federal Register*. Respondents would have fifteen (15) days from service of the complaint to answer, rather than the existing fifteen (15) days from receipt. The section is also amended to eliminate the overly restrictive qualification "mandatory" before "injunction," delete as redundant the phrase "of any kind" in paragraph (b) and the phrase "or charges" in paragraph (c), and correct typographical errors. The last phrase in the first subparagraph of paragraph (c) is deleted on the ground that the phrase is incompatible with standard adjudicatory procedure.

Section 211.57

Section 211.57 is renumbered § 211.56 and amended to provide for a "petition" instead of the inapt "motion," to require that petitions be served on all parties to the original investigation, to streamline procedure by replacing the existing system of provisional acceptance with an institution procedure similar to that used in the institution of section 337 investigations, and to delete as unnecessary the penultimate sentence of paragraph (b). The Commission prefers to issue an advisory opinion rather than to modify or dissolve an order, if the issuance of an advisory opinion can resolve the question raised by the person petitioning for modification or dissolution of an order.

Section 211.58

Section 211.58 is renumbered § 211.57.

Section 211.59

Section 211.59 is renumbered § 211.58.

A new subpart C is created to comprise new section 211.59, which is identical to old § 211.54, except for the deletion of paragraph (a) and the changes noted above.

List of Subjects in 19 CFR Part 211

Administrative practice and procedure, Enforcement.

Part 211 is revised to read as follows:

PART 211—ENFORCEMENT PROCEDURES**211.01 Purpose.****Subpart A—Consent Order Procedure**

211.20 Opportunity to submit proposed consent order.

211.21 Settlement by consent.

211.22 Contents of consent order agreement.

Subpart B—Enforcement, Modification, and Revocation of Exclusion Orders, Cease and Desist Orders, and Consent Orders

211.50 Applicability.

211.51 Information gathering.

211.52 Confidentiality of information.

211.53 Review of reports.

211.54 Modification of reporting requirements.

211.55 Proceedings to enforce exclusion orders, cease and desist orders, and consent orders.

211.56 Modification or rescission of exclusion orders, cease and desist orders, and consent orders.

211.57 Temporary emergency action.

211.58 Notice of enforcement action to Government agencies.

Subpart C—Advisory Opinions

211.59 Advisory opinions.

Authority: 19 U.S.C. 1333, 1335, and 1337.

§ 211.01 Purpose.

This part sets forth procedures for the settlement by consent of matters that involve alleged violations of section 337 of the Tariff Act of 1930 and for the enforcement, modification, and revocation of exclusion orders, cease and desist orders, and consent orders. Definitions applicable to Part 210 apply to this part unless specifically provided otherwise.

Subpart A—Consent Order Procedure**§ 211.20 Opportunity to submit proposed consent order.**

(a) *Prior to institution of an investigation.* Where time, the nature of the proceeding, and the public interest permit, any person being investigated pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) shall be afforded the opportunity to submit to the Commission a proposal for disposition of the matter under investigation in the form of a consent order agreement that incorporates a proposed consent order executed by or on behalf of such person and that complies with the requirements of § 211.22.

(b) *Subsequent to institution of an investigation.* In investigations under section 337 of the Tariff Act of 1930, a

proposal to settle a matter by consent shall be submitted as a motion to the administrative law judge to terminate an investigation under § 210.51 of this chapter together with a consent order agreement that incorporates a proposed consent order. If the consent order agreement contains confidential business information within the meaning of § 201.6 of this chapter, a copy of the agreement with such information deleted shall accompany the motion. The agreement shall comply with the requirements of § 211.22. At any time prior to commencement of a hearing as provided in § 210.41(a)(1) of this chapter, the motion may be filed by one or more respondents. However, upon request and for good cause shown, the administrative law judge may consider such a motion during or after a hearing. The filing of the motion shall not stay proceedings before the administrative law judge unless the administrative law judge so orders. The administrative law judge shall promptly file with the Commission an initial determination regarding the motion for termination. If the initial determination contains confidential business information, a copy of the initial determination with such information deleted shall be filed with the Commission simultaneously with the filing of the confidential version of the initial determination. Pending disposition by the Commission of a consent order agreement, a party may not, absent good cause shown, withdraw from the agreement once it has been submitted pursuant to this section.

§ 211.21 Settlement by consent.

(a) If an initial determination granting the motion for termination based on a consent order agreement is filed with the Commission, the Commission shall promptly serve copies of the nonconfidential version of the initial determination and the consent order agreement on the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

(b) The commission, after considering the effect of the settlement by consent upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers in the manner provided by § 210.58(a) of this chapter, shall dispose of the initial determination according to the procedures of sections 210.53 through 210.56 of this Chapter. In accordance

with subsection (c) of section 337 of the Tariff Act of 1930, an order of termination based upon a consent order agreement need not constitute a determination as to violation of section 337. The Commission shall publish in the **Federal Register** and serve on all parties notice of its action. Should the Commission reverse the initial determination and deny the motion, the parties are in no way bound by their proposal in later actions before the Commission.

§ 211.22 Contents of consent order agreement.

(a) *Contents.* Every consent order agreement shall contain, in addition to the proposed consent order, the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order; and

(3) A statement that the enforcement, modification, and revocation will be carried out pursuant to Subpart B of Part 211, incorporating by reference the Commission's Rules of Practice and Procedure. In the case of an intellectual property-based investigation, the consent order agreement shall also contain a statement that the consent order agreement shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has been affirmed by all appellate tribunals of competent jurisdiction or the time for filing appeals with such appellate tribunals has expired without appeal being taken. The consent order agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed.

(b) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and Parts 210 and 211 for other Commission action. The Commission may require periodic compliance reports pursuant to Subpart B of Part 211 to be submitted by the person entering into the consent order agreement.

Subpart B—Enforcement, Modification, and Revocation of Exclusion Orders, Cease and Desist Orders, and Consent Orders

§ 211.50 Applicability.

The rules in this subpart apply to exclusion orders, cease and desist orders, and consent orders.

§ 211.51 Information gathering.

(a) *Power to require information.* Whenever the Commission issues an exclusion order, cease and desist order, or consent order, it may require any person to report facts available to that person that will aid the Commission in determining whether and to what extent there is compliance with the order or whether and to what extent the conditions that led to the order are changed. The Commission may also include provisions that exercise any other information gathering power available to it by law. The Commission may at any time request the cooperation of any person or agency in supplying it with information that will aid it in these determinations.

(b) *Form and detail of reports.* Reports under paragraph (a) of this section are to be in writing, under oath, and in such detail and in such form as the Commission prescribes.

(c) *Power to enforce informational requirements.* Terms and conditions of exclusion orders, cease and desist orders, and consent orders for reporting and information gathering shall be enforceable by the Commission by a civil action under 19 U.S.C. 1333, or, at the Commission's discretion, in the same manner as any other provision of the exclusion order, cease and desist order, or consent order is enforceable.

(d) *Term of reporting requirement.* An exclusion order, cease and desist order, or consent order may provide for the frequency of reporting or information gathering and the date on which these activities are to terminate. If no date for termination is provided, reporting and information gathering shall terminate when the exclusion order, cease and desist order, or consent order or any amendment to it expires by its own terms or is terminated.

§ 211.52 Confidentiality of information.

Confidential information (as defined in § 201.6(a) of this Chapter) that is provided to the Commission pursuant to exclusion order, cease and desist order, or consent order will be received by the Commission in confidence. Requests for confidential treatment shall comply with section 201.6 of the Commission's rules. The restrictions on disclosure and the procedures for handling such

information (which are set out in §§ 210.6 and 210.44 of this Chapter) shall apply and, in a proceeding under §§ 211.55 or 211.56, the Commission or the presiding administrative law judge may, upon motion or *sua sponte*, issue or continue appropriate protective orders.

§ 211.53 Review of reports.

(a) *Review to insure compliance.* The Commission, through its Office of Unfair Import Investigations, will review reports submitted pursuant to any exclusion order, cease and desist order, or consent order and conduct such further investigation as it deems necessary to insure compliance with its orders.

(b) *Extension of time.* The Director of the Office of Unfair Import Investigations may, for good cause shown, extend the time in which reports required by an exclusion order, cease and desist order, or consent order may be filed. An extension of time within which a report may be filed, or the filing of a report that does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§ 211.54 Modification of reporting requirements.

(a) *Exclusion and cease and desist orders.* The Commission may modify reporting requirements of exclusion and cease and desist orders as necessary.

(1) To assure compliance with an outstanding exclusion order or cease and desist order;

(2) To take account of changed circumstances; or

(3) To minimize the burden of reporting or informational access. An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants, announce that a modification of reporting is under consideration and ask for comment, but it may also modify any reporting requirement at any time without notice, consistent with the standards of this section.

(b) *Consent orders.* Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall publish a notice of any proposed change in the *Federal Register*, together with the reporting requirements to be modified and the reasons therefor, and serve

notice on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter.

§ 211.55 Proceedings to enforce exclusion orders, cease and desist orders, and consent orders.

(a) *Informal enforcement proceedings.* Informal enforcement proceedings may be conducted by the Commission, through its Office of Unfair Import Investigations, with respect to any act or omission by any person in violation of any provision of an exclusion order, cease and desist order, or consent order. Such matters may be handled by the Commission through correspondence or conference or in any other way that the Commission deems appropriate. The Commission may issue such orders as it deems appropriate to implement and insure compliance with the terms of an exclusion order, cease and desist order, or consent order, or any part thereof. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this Subpart.

(b) *Formal Commission enforcement proceedings.* (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing by the complainant in the original investigation or by the Commission of a complaint setting forth alleged violations of any exclusion order, cease and desist order, or consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator and a notice of institution published in the *Federal Register*. Within fifteen (15) days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered.

(2) Upon the failure of a respondent to file and serve a response within the time and in the manner prescribed herein the Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate without notice or hearing, or, in its discretion, proceed without notice to take evidence on the allegations set forth in the complaint, provided that the Commission (or

administrative law judge, if one is appointed) may permit late filing of an answer for good cause shown.

(3) The Commission, in the course of a formal enforcement proceeding under paragraph (b) of this section may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing provided for under paragraph (b) of this section is not subject to sections 554, 555, 556, 557, and 702 of title 5, United States Code. The Commission may delegate any hearing under paragraph (b) of this section to the Chief Administrative Law Judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

(4) Upon conclusion of an enforcement proceeding under paragraph (b) of this section, the Commission may:

(i) modify a cease and desist order, consent order, or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing such order;

(ii) bring civil actions in a United States district court pursuant to paragraph (c) of this section (and subsection (f) of section 337 of the Tariff Act of 1930) requesting the imposition of a civil penalty or the issuance of injunctions incorporating the relief sought by the Commission; or

(iii) revoke the cease and desist order or consent order and direct that the articles concerned be excluded from entry into the United States.

(5) Prior to effecting any modification, revocation, or exclusion under paragraph (b) of this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(6) In lieu of or in addition to taking any action provided for in paragraph (b)(1) of this section, the Commission may issue, pursuant to subsection (i) of section 337 of the Tariff Act of 1930, an order providing that any article imported in violation of the provisions of section 337 and an outstanding final exclusion order issued pursuant to subsection (d) of section 337 be seized and forfeited to the United States, if the following conditions are satisfied:

(i) The owner, importer, or consignee of the article (or the agent of such person) previously attempted to import the article into the United States;

(ii) The article previously was denied entry into the United States by reason of a final exclusion order; and

(iii) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result from any further attempt to import the article into the United States.

(c) *Court enforcement.* To enforce an exclusion order, cease and desist order, or consent order, the Commission may, without prior notice to a respondent or any other type of proceeding otherwise available under the section, initiate a civil action in a U.S. district court pursuant to subsection (f) of section 337 of the Tariff Act of 1930, requesting the imposition of such civil penalty or the issuance of such injunctions as the Commission deems necessary to enforce its orders and protect the public interest.

§ 211.56 Modification or rescission of exclusion orders, cease and desist orders, and consent orders.

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, and consent orders.*

(1) Whenever any person believes that conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, or consent order be modified or set aside, in whole or in part, such person may file with the Commission a petition requesting such relief. The Commission may also on its own initiative consider such action. The petition shall state the changes desired and the changed circumstances warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist order, or consent order was issued. Any person may file an opposition to the petition within ten (10) days of service of the petition.

(2) If the petitioner previously has been found by the Commission to be in violation of section 337 of the Tariff Act of 1930 and if his petition requests a Commission determination that the petitioner is no longer in violation of that section or petitions for modification or rescission of an order issued pursuant to subsections (d), (e), (f), (g), or (i) of section 337, the burden of proof in any proceeding initiated in response to the petition pursuant to paragraph (b) of this section shall be on the petitioner. In accordance with subsection (k) of section 337, relief may be granted by the Commission with respect to such petition on the basis of new evidence or evidence that could not have been presented at the prior proceeding or on grounds that would permit relief from a

judgment or order under the Federal Rules of Civil Procedure.

(b) *Commission action upon receipt of petition.* The Commission may thereafter institute a proceeding to modify or rescind the exclusion order, cease and desist order, or consent order by publishing a notice of the proceeding in the *Federal Register*. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. After consideration of the petition, any responses thereto, and any information placed on the record at a public hearing or otherwise, the Commission shall take such action as it deems appropriate. The Commission may delegate any hearing under this section to the Chief Administrative Law Judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

§ 211.57 Temporary emergency action.

(a) Whenever the Commission determines, pending a formal enforcement proceeding under § 211.55(b), that without immediate action a violation of an exclusion order, cease and desist order, or consent order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice modify or revoke such order and, if it is revoked, replace the order with an appropriate exclusion order.

(b) If the Commission determines, pending a formal enforcement proceeding under § 211.55(b), that without immediate action a violation of a final exclusion order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice issue an order requiring temporary seizure and forfeiture of the imported articles in question, provided the following requirements are satisfied:

(1) The owner, importer, or consignee of the article (or the agent of such a person) previously attempted to import the article into the United States;

(2) The article was previously denied entry into the United States by reason of a final exclusion order; and

(3) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result

from any further attempt to import the article into the United States.

(c) Prior to taking any action under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under § 211.55 at the time of taking action under this section or as soon as possible thereafter, in order to give the alleged violator and other interested parties a full opportunity to present information and views regarding the continuation, modification, or revocation of Commission action taken under this section.

§ 211.58 Notice of enforcement action to government agencies.

(a) *Consultation.* The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) *Notification of Treasury.* The Commission shall notify the Secretary of the Treasury of any action under this Subpart that results in a permanent or temporary exclusion of articles from entry, or the revocation of an order to such effort, or the issuance of an order compelling seizure and forfeiture of imported articles.

Subpart C—Advisory Opinions

§ 211.59 Advisory opinions.

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether the person's proposed course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed its request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5, United States Code.

(b) *Revocation.* The Commission may at any time reconsider any advice given under this section and, where the public interest requires, revoke its prior advice. In such event the person will be given notice of the Commission's intent to

revoke as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a person for violation of an exclusion order, cease and desist order, or consent order with respect to any action that was taken in good faith reliance upon the Commission's advice under this section, if all relevant facts were accurately presented to the Commission and such action was promptly discontinued upon notification of revocation of the Commission's advice.

Issued: October 11, 1988.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-23817 Filed 10-14-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 390

[Docket No. R-88-1864; FR-2548]

Government National Mortgage Association; Eligible Issuers Under Mortgage-Backed Securities Program

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: Under current regulations each of the issuers of mortgage-backed securities guaranteed by the Government National Mortgage Association is required to maintain a minimum net worth. The dollar amount of this minimum varies according to the type of security being issued. The currently effective minimum dollar amounts were established in January, 1979. This rule proposes to update these dollar amounts in order to bring them closer to current market and economic conditions, and to help ensure that issuers have the ability to carry out their responsibilities in the Mortgage-Backed Securities Program.

DATE: Comment due date: December 16, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

John E. Vihstadt, Executive Assistant to the President, Room 6100, Government National Mortgage Association, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 755-5926. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paragraph (c) of 24 CFR 390.3 contains the currently effective net worth requirements for issuers of various categories of mortgage-backed securities. That paragraph establishes five such categories: (1) Straight pass-through securities; (2) modified pass-through securities backed by mortgages on one- to four-family residences; (3) modified pass-through securities backed by manufactured home mortgages; (4) modified pass-through securities backed by mortgages on multifamily projects; and (5) issuance of more than one type of security.

The net worth requirement for issuance of straight pass-through securities, \$100,000, would remain unchanged by this proposal. However, it should be noted that no further applications for straight pass-through securities are being accepted by GNMA.

The net worth requirement for issuance of modified pass-through securities backed by home mortgages issued on or after October 1, 1979 is currently \$100,000, plus 1 percent of securities outstanding in excess of \$5 million but not in excess of \$20 million; plus 0.2 percent of securities outstanding in excess of \$20 million.

Under this proposal, the net worth requirement would be increased to \$250,000, plus 0.3 percent of securities in excess of \$20 million.

The net worth requirement for issuance of modified manufactured home pass-through securities on or after October 1, 1979 is currently \$500,000, plus 0.2 percent of securities outstanding in excess of \$35 million.

Under this proposal, the net worth requirement would be increased to \$1,000,000, plus 0.3 percent of securities outstanding in excess of \$35 million.

The net worth requirement for issuance of modified multifamily project pass-through securities on or after October 1, 1979 is currently \$500,000, plus 0.2 percent of securities outstanding in excess of \$35 million.

Under this proposal, the net worth requirement would be increased to \$1,500,000, plus 0.3 percent of securities outstanding in excess of \$35 million.

The net worth requirement for issuance of more than one type of security on or after October 1, 1979 is

currently \$500,000, plus 0.2 percent of securities outstanding in excess of \$35 million.

Under this proposal, the net worth requirement would be increased to \$1,500,000, plus 0.3 percent of securities outstanding in excess of \$35 million.

Finally, current regulations (24 CFR 390.23) provide for a net worth requirement of \$50 million or more for issuers of bond-type securities. Under this proposal, this net worth requirement would not be changed.

GNMA has, through 18 years of program experience, had ample occasion to observe and analyze the benefits and burdens of being a mortgage-backed securities issuer and has related these implications to the need for a minimum net worth requirement. The principal need for working capital for a participant in the MPS program arises when a pooled mortgage is delinquent or goes into a foreclosure status. During the time a loan is delinquent, the issuer must continue making payments to securities holders, using its own resources, until the delinquency is cured or an insurance claim payment is received. Close analysis shows that the cash requirements for such advances can exceed by many times the amount of the required minimum net worth even under the new levels being proposed in this rule. If a loan is foreclosed, the issuer is responsible for covering, out of its own resources, a portion of the losses not covered by the FHA claim settlement. In some circumstances, such losses may also exceed an amount equal to an issuer's minimum net worth even under the new levels proposed in this rule. Furthermore, it is GNMA's position, in accordance with established FHA and VA policies, that an issuer, where appropriate, provide forbearance in instances where there is a prospect for curing a loan delinquency and avoiding foreclosure. Such forbearance by an issuer requires the existence of adequate capital.

If an issuer is unable to continue making security holder payments, GNMA "defaults" an issuer and immediately assumes issuer responsibilities, including the requirement that payments to securities holders be advanced out of its own funds from the Federal Treasury. The net worth requirements of this rule will strengthen the ability of issuers to withstand borrower failure to make mortgage payments and other economic problems and will reduce the risk of the occurrence or development of an event of default.

The Consumer Price Index, a widely used benchmark to measure inflation,

rose 59 percent from January 1979, when the current net worth requirements were established, through December 1987. For more dramatic, however, is the increase in the value of GNMA securities outstanding (and hence GNMA's contingent liability, given the U.S. Government's full faith and credit backing of the securities) from \$92.3 billion at year-end 1978 to \$463 billion in December 1987.

For all these reasons, GNMA has determined that the new levels of net worth proposed in this rule are appropriate and necessary to ensure that issuers have the ability to carry out their responsibilities in the Mortgage-Backed Securities Program.

GNMA expects the new net worth requirements to be effective for all issuers who issue pools with an issue date six months from the publication date of the final rule. GNMA further expects to "grandfather" those issuers who do not request new commitments or issue new pools after this effective date.

Procedural Requirements

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Issuers of GNMA securities are private firms involved in the origination or acquisition of residential mortgage loans. The typical GNMA issuer is a mortgage banking company, savings

institution or commercial bank. There are approximately 1,200 approved GNMA issuers.

All GNMA issuers are FHA approved mortgagees and must meet any FHA minimum net worth requirements. In addition, they must have a net worth acceptable to GNMA. Both the current GNMA requirements and the requirements proposed in this rule are geared to the type of securities being issued and the risks they entail. In neither case is there an undue burden upon small entities nor are such entities discriminated against.

This rule is not listed in the Department's semiannual agenda of regulations published on April 25, 1988, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 390

Mortgages, Securities.

Accordingly, the Department proposes to amend 24 CFR Part 390 as follows:

PART 390—GUARANTEE OF MORTGAGE-BACKED SECURITIES

1. The authority citation for 24 CFR Part 390 would continue to read as follows:

Authority: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1732 a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Paragraph (c) of § 390.3 would be revised to read as follows:

§ 390.3 Eligible issuers of securities.

(c) Each eligible issuer shall maintain at all times a net worth in assets acceptable to GNMA not less than the applicable minimum amount set forth in this paragraph, as follows:

(1) For the issuance of straight pass-through securities, \$100,000;

(2) For the issuance of modified pass-through securities based on and backed by mortgages on one-to-four family residences.

(i) With respect to securities issued before October 1, 1979, an amount equal to the lesser of:

(A) \$250,000; or

(B) \$100,000, plus 1 percent of securities outstanding in excess of \$5 million.

(ii) With respect to securities issued on or after October 1, 1979, and before [effective date of amendment], an amount equal to the sum of:

(A) \$100,000; plus

(B) 1 percent of securities outstanding in excess of \$5 million but not in excess of \$20 million; plus

(C) 0.2 percent of securities outstanding in excess of \$20 million.
(iii) With respect to securities issued on or after [effective date of amendment], an amount equal to the sum of:

(A) \$250,000; plus
(B) 0.3 percent of securities outstanding in excess of \$20 million.
(3) For the issuance of modified pass-through securities based on and backed by mortgages on manufactured homes:

(i) With respect to securities issued before October 1, 1979, \$500,000.

(ii) With respect to securities issued on or after October 1, 1979, and before [effective date of amendment], an amount equal to the sum of:

(A) \$500,000; plus
(B) 0.2 percent of securities outstanding in excess of \$35 million.
(iii) With respect to securities issued on or after [effective date of amendment], an amount equal to the sum of:

(A) \$1,000,000; plus
(B) 0.3 percent of securities outstanding in excess of \$35 million.
(4) For the issuance of modified pass-through securities based on and backed by mortgages on multifamily projects (both construction and premanent mortgages):

(i) With respect to securities for which the first issue within any pool or project was issued before October 1, 1979, an amount equal to the lesser of:

(A) \$500,000 or
(B) The sum of 3 percent of the first \$5 million of securities outstanding, plus 2 percent of the next \$5 million of securities outstanding, plus 1 percent of securities outstanding in excess of \$10 million, but in no event shall such net worth be less than \$100,000.

(ii) With respect to securities for which the first issue within any pool or project was issued on or after October 1, 1979, and before [effective date of amendment], an amount equal to the sum of:

(A) \$500,000; plus
(B) 0.2 percent of securities outstanding in excess of \$35 million.
(iii) With respect to securities issued on or after [effective date of amendment], an amount equal to the sum of:

(a) \$1,500,000; plus
(B) 0.3 percent of securities outstanding in excess of \$35 million.
(5) For the issuance of more than one type of security:

(i) With respect to the issuance of more than one type of security on or after October 1, 1979, and before [effective date of amendment], an amount equal to the sum of:

(A) \$500,000; plus

(B) 0.2 percent of all mortgage-backed securities outstanding in excess of \$35 million.

(ii) With respect to the issuance of more than one type of security on or after [effective date of amendment], an amount equal to the sum of:

(A) \$1,500,000; plus
(B) 0.3 percent of all mortgage-backed securities outstanding in excess of \$35 million.

* * * * *

Date: October 6, 1988.

Mark Buchman,

President, Government National Mortgage Association.

[FR Doc. 88-23885 Filed 10-14-88; 8:45 am]

BILLING CODE 4210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3463-3]

Plan for American Cyanamid Company Fortier Plant, Westwego, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: EPA is proposing approval of the American Cyanamid Company, Fortier Plant, Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). This volatile organic compound (VOC) Bubble uses credits from the change of service of three storage tanks from VOC to non-VOC usage. These credits are used to offset reductions required by controlling one methanol storage tank. The Emission Reduction Credits (ERCs) were determined to be valid, consistent with EPA's proposed Emissions Trading Policy Statement (ETPS) of April 7, 1982, [47 FR 15076], and the final ETPS of December 4, 1986. [51 FR 43814]

DATE: Comments must be received by November 16, 1988.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Bldg., 625 N. 4th St., P.O. Box 44066, Baton Rouge, Louisiana 70804.
Environmental Protection Agency, Air Programs Branch, Region 6, 1445 Ross Ave., Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, SIP New Source Section, Air Programs Branch; Air, Pesticides &

Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202, (214) 655-7214.

SUPPLEMENTARY INFORMATION: On May 5, 1986, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan for the American Cyanamid Company Fortier Plant located at Westwego, Jefferson Parish. The submittal contained certification that adequate notice and a public hearing were provided for the proposed alternate control plan. EPA is proposing to approve the SIP revision and invites comments from all interested persons. Comments received at the EPA Region 6 address listed above within 30 days of the publication of this notice will be considered.

Background

American Cyanamid's Fortier Plant would like to use emission reductions from the change of service of three dimethylamine tanks. These tanks were used to store dimethylamine, a raw material in the manufacture of synthetic resins. The tanks are now used for non-VOC storage and emissions are limited to one ton per year each. These credits from this change of service would be used in lieu of controlling the emissions from one methanol storage tank. The total noncompliant emission from the methanol tank is 7.62 Tons Per Year (TPY).

This bubble qualifies as a "pending bubble" under EPA's final Emissions Trading Policy Statement (ETPS), since it was submitted to EPA by the State before the final ETPS was published in the *Federal Register* on December 4, 1986, [51 FR 43814]. The final ETPS states that for pending bubbles " * * * in primary nonattainment areas needing but lacking demonstrations, these bubbles should contribute to progress towards attainment. 'Progress towards attainment' means some extra reduction beyond equivalence, with the lowest-of-actual-SIP-allowable-or-RACT allowable emissions baseline applied as of the time applicants originally sought credit. In other areas these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval." This bubble falls into the category of "other areas" since it is in an urban ozone nonattainment area with an EPA-approved demonstration of attainment. In March of 1984, the three dimethylamine tanks had changes made in substances stored which reduced

emissions by 16.4 TPY. All three tanks were converted from dimethylamine storage and service to storage and service of non-VOCs. One tank conversion had a consequential reduction of 6.1 TPY; another one of 6.3 TPY; and the last one of 4.0 TPY. The methanol tank experienced no change of

emissions, remaining constant at 8.32 TPY. The methanol tank's emissions were subtracted from the Emission Reduction Credits (ERCs) gained from a change of service of the other tanks. The trade is summarized below:

Credit from change of service of dimethylamine storage tanks to a non-VOC status:	+	Increase in emissions from one methanol storage tank with 10 percent progress	=	Credit remaining
(-16.4 TPY)		(8.38 TPY)		(-8.0 TPY)

EMISSIONS (TONS/YEAR) ¹

Sources	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Non-VOC.....	6.1	0	-6.1	6.1	0	-6.1
Non-VOC.....	6.3	0	-6.3	6.3	0	-6.3
Non-VOC.....	4.0	0	-4.0	4.0	0	-4.0
Methanol.....	8.32	8.32	0.0	.7	8.32	+7.62
Air Quality Benefit.....	—	—	—	0	.76	+7.62
Total.....	24.72	8.32	-16.4	17.1	9.1	-8.0

¹ As calculated using EPA Publication, *Compilation of Air Pollutant Emission Factors*, Fourth Edition. The permit must reference the calculations of the letters of October 15 & 19, 1984, as substantiating calculations for the permit.

The appropriate baseline for a bubble depends on, among other things, the attainment designation and SIP approval status of the area in which the affected unit is located. Jefferson Parish is part of a designated urban ozone nonattainment area. EPA approved the explanation in the SIP that showed how the area would attain the ozone national ambient air quality standard by December 31, 1982 (referred to as the demonstration of attainment) on February 14, 1980 [45 FR 9903]. Because the area continued to experience violations of the ozone standard through 1982, EPA proposed on February 3, 1983, to find the New Orleans SIP to be deficient and call for a revised SIP under Section 110(a)(2)(H) of the Clean Air Act. No violations were recorded in 1983, however, and EPA withheld final action on the SIP call.

The last five years of data for the three parishes (Jefferson, Orleans, & St. Bernard) in the New Orleans urban nonattainment area is as follows:

Year	NAAQS (ppm)	Highest exceedance (ppm)	Number of exceedances for that year
1983.....	.12	NA	0
1984.....	.12	.130	2 (Different sites)
1985.....	.12	NA	0
1986.....	.12	NA	0
1987.....	.12	.137	1

The New Orleans urban nonattainment area has had less than one exceedance per year averaged over the 1983-1987 period. EPA is monitoring the air quality situation further before making any decision to call for a revised SIP. The State has not requested that the

area be redesignated from nonattainment.

Review

The bubble was reviewed for compliance with the requirements of Section 110 of the Clean Air Act, 40 CFR Part 51, EPA's proposed Emissions Trading Policy Statement (ETPS) and Technical Issues Document published in the *Federal Register* on April 7, 1982 [47 FR 15076], and the pending bubble provisions of the final ETPS. EPA has reviewed the State submittal and developed an Evaluation Report.¹ This report is available for inspection by interested parties during normal business hours at the Dallas EPA Regional Office. The review is summarized below.

To be valid for trading purposes, an emission reduction must be surplus, enforceable, permanent, and quantifiable. First, the reductions are surplus because the emission reduction goes beyond Reasonably Available Control Technology (RACT). The baseline for determining the surplus emission credits from the dimethylamine tanks is based on a RACT emission rate and actual throughput for each source providing credit. For tanks of this type and volume, EPA considers RACT to be a submerged fill pipe. The amount of credit that is needed by the methanol tank is the difference between RACT level emissions and actual emissions. RACT level emissions are based on internal floating roof calculations and actual emissions are based on fixed roof

calculations, both based on actual throughput.

Second, the emissions reductions are enforceable at the State level by authority of permit number 1896 M-1 granted by the Louisiana Department of Environmental Quality (LDEQ) to American Cyanamid on May 8, 1986. As a formal SIP revision, the new limits would also be federally enforceable. This bubble prohibits the storage of VOCs in tanks 36-79, 37-79, and 38-79. The legally enforceable recordkeeping requirements must require data that makes definitive that no VOCs are being stored in these tanks. The permit must be changed to reflect 0 TPY for tanks 36-79, 37-79, and 38-79 for post-bubble allowable emissions. Also, the State does not require adequate record keeping. The company must be required by the permit to keep sufficient records to determine compliance and retain them for a minimum of two years.

Third, the emission reductions are permanent. The credit giving tanks are designated to have a permanent change of usage from VOC to non-VOC storage by authority of the State permit issued.

Fourth, the emissions are quantifiable. Calculations quantifying all of the emissions involved in the trade were submitted to, and verified by, EPA.

The proposed bubble also meets the further criteria given in the Emissions Trading Policy Technical Issues Document published in the April 7, 1982 *Federal Register* [47 FR 15079] as follows:

1. Emissions trades must involve the same pollutants.

¹ EPA Review of the American Cyanamid Fortier Plant Bubble in October 1986.

All of the emissions involved in this trade are nonexempt, photochemically reactive VOCs.

2. All uses of ERCs must satisfy ambient tests.

Pound for pound trades of VOCs such as this are considered to have no net adverse impact on the environment.

3. Trades may not increase net baseline emissions in nonattainment areas.

This trade employs a RACT baseline consistent with EPA policy for urban ozone nonattainment areas with approved demonstrations of attainment.

4. Emission trades should not increase hazardous pollutants.

None of the VOC's involved in this trade are listed under Section 112 of the Clean Air Act (NESHAP).

5. Emission trades cannot be used to meet technology based requirements.

The American Cyanamid Fortier Plant is an existing source. Therefore, New Source Performance Standards (NSPS), Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) requirements do not apply.

6. There can be no shifting demand situation that leads to credit.

Before EPA takes final action on this bubble, the State shall provide assurances that the VOCs that have been shifted out of tanks 36-79, 37-79, and 38-79 have not been shifted elsewhere in the nonattainment area.

The American Cyanamid Bubble meets all of the criteria for an acceptable Bubble as discussed above; therefore, EPA is proposing to approve this plan, provided the changes and assurances discussed above are made.

Under the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities since it proposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Date: December 19, 1986.

Frances E. Phillips,

Acting Regional Administrator (6A).

Editorial Note.—This document was received at the Office of the Federal Register October 12, 1988.

[FR Doc. 88-23896 Filed 10-14-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06; Notice 6]

RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Passenger Cars; Light Trucks, Vans, and Multipurpose Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for extension of comment period.

SUMMARY: This notice denies four petitions which sought an extension of the comment period for two Advanced Notices of Proposed Rulemaking (ANPRMs) considering whether to propose amending Standard No. 214, *Side Door Strength* for passenger cars, light trucks, vans, and multipurpose passenger vehicles. Because the petitioners failed to show good cause for the extension of the comment period and because an extension would not be consistent with the public interest, NHTSA has decided to deny these petitions.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590. Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: On January 27, 1988, NHTSA published two notices of proposed rulemaking (NPRMs). The first NPRM would amend Standard No. 214, *Side Door Strength* (53 FR 2239) to upgrade its test procedures and performance requirements for passenger cars. More specifically, this NPRM proposed to add an additional test to Standard 214, in which passenger cars would be required to protect vehicle occupants in a crash test. In this proposed crash test, the car would be struck on either side by a moving barrier simulating another vehicle. The second NPRM proposed the specifications and qualification requirements for the new anthropomorphic test dummy that would be used to simulate vehicle occupants in the crash test to measure injury potential for the thorax and pelvis. 53 FR 2254. The agency allowed a nine month comment period for these two NPRMs, with the comment period closing October 24, 1988. Since the agency recognized that these NPRMs raised some complex technical issues, it provided a longer than typical comment

period to facilitate technical analyses and submissions from interested parties such as safety groups, manufacturers, researchers, and foreign governments.

On August 19, 1988, NHTA published two advanced notices of proposed rulemaking (ANPRMs) regarding additional aspects of side impact protection. One ANPRM announced that NHTSA is considering whether to propose requirements for cars to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the side protection of the vehicle is a relevant factor. (53 FR 31712.) The other ANPRM requested comments about establishing side impact protection requirements for light trucks, vans, and multipurpose passenger vehicles (MPVs). (53 FR 31716.) The agency allowed a 60 day comment period for these ANPRMs, with the comment period closing on October 18, 1988.

On September 27, 1988 NHTSA denied four petitions to extend the comment period related to the January NPRMs. The agency reasoned that the petitioners failed to show good cause for an extension in the comment period and that such an extension would not be consistent with the public interest. (53 FR 37615).

NHTSA has received four petitions for extension, by two months to three and one half months, of the comment period related to the August ANPRMs. The petitioners are Ford Motor Co., Motor Vehicle Manufacturers Association (MVMA), the Committee of Common Market Automobile Constructors (CCMC), and Automobile Importers of America (AIA).

The reasons offered to justify extending the comment periods were similar. Ford, MVMA, CCMC, and AIA stated that because its (or its member companies') engineers are actively involved in preparing comments to the January NPRM, they are not able to provide comprehensive comments to the August ANPRMs. In addition, Ford and the CCMC noted that much of the information requested in the ANPRMs is not readily available and requires a substantial amount of research and analysis. MVMA also noted that some of its member companies had not been involved in the earlier side impact notices until the issuance of the August ANPRMs. Ford concluded that the public would be best served by an extension of the comment periods because the issue of side impact is of great importance. If the extension is not granted, Ford believes it will have to file

most of the requested information after the comment periods close.

The agency notes that under 49 CFR 553.19, the filing of a petition for an extension of time to submit comments "does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest." What constitutes "good cause" in a particular case depends on a consideration of all relevant facts, including the extent to which the petitioner demonstrates that it will not be able to offer meaningful comments on the proposal without an extension, the reasons for that inability, the extent to which the petitioner demonstrates the need for the additional information in order to complete the rulemaking record, the length of the comment period, and the extent to which an extension is consistent with the public interest.

Applying these criteria to these petitions, NHTSA concludes that the petitioners have not shown good cause for extending the comment period for these ANPRMs. First, the agency believes that the two month comment period provides sufficient time for interested parties to provide meaningful comments, even though some commenters noted that the closing date for the NPRM is one week after the ANPRM closing date. As the agency noted in the September 27, 1987 denial notice, the unusually long comment period for the NPRM of nine months should allow commenters enough time to provide meaningful comments to both the NPRMs and ANPRMs. While some commenters may not be able to complete their quantified analyses within the comment period, the petitioners still can provide meaningful qualitative comments on the issues in the ANPRM. Further, these petitioners can conduct some testing and use that test data to prepare meaningful comments. The fact that petitioners cannot conduct *all* of the testing they would like before preparing their comments is not sufficient to warrant a finding of good cause in this case. Fifth and finally, the public interest with respect to these proposals is best served by having the agency decide whether to promulgate NPRMs concerning head and neck injuries related to side impact and side impact protection in light trucks in a timely manner without unnecessary addition delays. Accordingly, NHTSA has concluded that the petitioners have not shown good cause for the extension of the comment periods for these ANPRMs, and those petitions are denied.

NHTSA would again like to remind the petitioners and any other interested parties that the agency will always consider, to the extent possible, comments filed after the comment closing date. Any interested parties are free to provide the agency with comments on any additional issues with which they are concerned after the comment period has closed. If these comments are received in time for the agency to consider in its determination of the next step in this rulemaking, NHTSA will consider the comments in that context. If the comments are received too late to be considered in determining the next step in this rulemaking, the comments will be treated as suggestions for future rulemaking in this area. Therefore, this denial of the petitions to extend the comment period should not be interpreted as foreclosing any person from providing NHTSA with additional information after the close of the comment period.

After carefully considering these petitions, NHTSA has concluded that they do not show good cause for extending the comment period for the side impact ANPRMs, nor would an extension of the comment period be consistent with the public interest. Therefore, the petitions are denied.

Issued on October 12, 1988.

Diane K. Steed,
Administrator.

[FR Doc. 88-23923 Filed 10-14-88; 8:45 am]
BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 87-15; Notice 2]

RIN 2127-AA57

Federal Motor Vehicle Safety Standards; Vehicle Classification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new vehicle classification system for the purposes of the Federal motor vehicle safety standards. Most vehicles currently fall into the classes of passenger car, multipurpose passenger vehicle (MPV), and truck. The MPV class consists primarily of passenger vans and on/off road vehicles. These classes, and their definitions, particularly the one for MPV's, have come to present various problems for implementing the agency's vehicle safety program. The agency has tentatively determined that it is no

longer appropriate to place these disparate vehicle types in the same class and that the language used in the MPV definition has become outdated and less clear.

To address these problems, this notice proposes two options for a new vehicle classification system. The first would substitute the categories of passenger car, truck, van, and special purpose vehicle for the existing categories of passenger car, truck, and multipurpose passenger vehicle. Under the second option, those existing categories would be replaced with the categories of passenger car, truck, and special purpose vehicle.

This rulemaking is focusing exclusively on the question of how vehicles should be grouped for the application of the safety standards generally, *not* whether any particular standard or standards should be extended to apply to additional vehicles. The latter determinations must be accompanied by agency conclusions about certain statutory criteria for each standard and each group of vehicles. NHTSA believes that those determinations can be made most appropriately by focusing on the individual standard or standards and the vehicle types in question. Since it is not the purpose of this proceeding to address the issues relating to the requisite statutory determinations for any group of standards or vehicles, this notice also proposes to amend all of the safety standards to ensure two things. First, each vehicle would continue to be subject to every standard requirement that applies to it under the existing classification system. Second, no vehicle would be subject to any additional safety standard requirements solely as a result of this proceeding to establish a new vehicle classification system.

DATES: *Comment Closing Date:* Comments on this notice must be received by NHTSA not later than January 17, 1989.

Proposed Effective Date: If adopted as a final rule, the vehicle classifications proposed in this notice would become effective on September 1, 1990.

ADDRESS: All comments should refer to Docket No. 87-15; Notice 2 and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8:00 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Parker, NRM-011, NHTSA, Room 5320, 400 Seventh Street SW., Washington, DC 20590 (202-366-4931).

SUPPLEMENTARY INFORMATION:**Statutory and Regulatory Framework**

Effective and proper implementation of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1381 *et seq.*) necessitates the division of the variety of new motor vehicles into distinct classes and the establishment of definitions for those classes to ensure that the classification of particular vehicles is performed accurately and with a minimum of difficulty. The vehicle class definitions are vital to manufacturers in determining their obligations under the Safety Act. The Safety Act authorizes NHTSA to issue Federal motor vehicle safety standards for new motor vehicles and items of motor vehicle equipment. Section 108(a)(1)(A) of the Safety Act (15 U.S.C. 1397(a)(1)(A)) specifies that no person shall manufacture for sale, sell, or offer for sale any new vehicle that is subject to a standard and that does not comply with that standard. Accordingly, it is necessary for vehicle manufacturers to be able to determine which of their vehicles are subject to each standard long before the vehicles are actually manufactured or sold.

The vehicle class definitions are also vital to the efforts of the agency to establish appropriate new safety standards. Section 103 of the Safety Act (15 U.S.C. 1392) specifies several requirements that every safety standard must specify. Section 103(a) requires each standard to be "practicable," to "meet the need for motor vehicle safety," and to be "stated in objective terms." Additionally, section 103(f) requires the agency to consider whether the standard is "reasonable, practicable, and appropriate for the particular type of motor vehicle for which it is prescribed and contributes to carrying out the purposes of the Act."

The legislative history of section 103(f) further explains what Congress meant when it directed NHTSA to consider whether a safety standard is appropriate for a particular type of motor vehicle. The Senate Committee Report states:

In determining whether any proposed standard is "appropriate" for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, the committee intends that the [NHTSA] will the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards. Such difference would, of course, be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacturer. S. Rep. No. 1301, 89 Cong., 2d Sess. at 7 (1966).

The House Committee Report states:

The [NHTSA] must also consider whether a proposed standard is reasonable, practicable, and appropriate for a particular type of vehicle or equipment for which it is prescribed. This provision allows the [NHTSA] in prescribing standards to consider the reasonableness and appropriateness of a particular standard in its relationship to the many different types and models of vehicles which are manufactured. H. Rep. No. 1776, 89th Cong., 2d Sess. at 18 (1966).

To further explain the House of Representatives' understanding of this provision, there was a colloquy between Representative Dingell, then a member of the House Commerce Committee that reported the bill to the full House, and Representative Staggers, the chairman of that committee. Some relevant portions of that colloquy were as follows:

Mr. Dingell. * * *

The report explains that the requirement that the [NHTSA] consider whether a standard is reasonable, practicable, and appropriate for a particular type of vehicle or equipment will allow the [NHTSA] to "consider the reasonableness and appropriateness of a particular standard in its relationship to the many different types or models of vehicles which are manufactured." Could this mean, for instance, that standards for trucks would not necessarily be the same as standards for passenger cars? I have in mind the example of the GSA requirements which apply to passenger cars and some other vehicles, but do not apply to certain heavy trucks and other types of vehicles.

Mr. Staggers. Well, certainly, I believe that it is understood.

Mr. Dingell. And, of course, there would be a possibility of different standards for one type of passenger vehicle, such as a convertible, as opposed to the standards for a standard sedan, for example? Am I correct on that point?

Mr. Staggers. Obviously a difference in types of vehicles could require differences in standards. 112 Cong. Rec. 19649, August 17, 1966.

From this legislative history, it was even clearer that the agency needed to group vehicles into appropriate classes for the purposes of the safety standards. Moreover, these classes were supposed to reflect differences in vehicle design and use. NHTSA was left with the task of determining what classes of vehicles should be established and what factors and differences in vehicle types should be considered in establishing the various classes of vehicles. Specifically, the agency had to determine whether to distinguish between vehicles based on:

1. The manufacturer's intent when it designed the vehicle;
2. Some particular physical characteristics of the vehicle;

3. The purposes for which purchasers were most likely to use the vehicle; or
4. Some combination of these factors.

Any of these approaches might produce a reasoned basis for classifying vehicles. For instance, a classification scheme based on the manufacturer's intent when it designs the vehicle (e.g., is it designed primarily to transport people or property?) is generally simple to determine from the configuration of the completed vehicle. Under this approach, if more space in the vehicle is filled with seating positions than cargo area, the vehicle would presumably have been designed primarily to transport people, and classed accordingly. On the other hand, it would be impossible for the agency to question any classifications if the manufacturer's subjective design intent is the sole basis for classifications. This would pose difficulties if the primary design intent were not obvious from looking at the vehicle.

To address this problem, the agency could examine those vehicles which it believes should be grouped together in a class and identify the physical characteristics that are common to each of those vehicles. The agency could then select, from those characteristics, ones that would serve to differentiate the vehicles in that class from all other vehicles. In order to be included in that class, a vehicle must possess all of those selected characteristics. This classification system would allow anyone to determine objectively the appropriate class for any particular vehicle.

While this approach seems intuitively sound, it is very difficult to identify particular physical characteristics which not only conveniently separate vehicles into different classes but also relate in some way to those aspects of design or performance that cause one class to have safety needs which differ from those of another class. If the agency does not properly identify the essential characteristics of vehicles, it is left with a classification system that attaches undue significance to particular characteristics that may not really be key features of a vehicle type. Such a classification system might result in vehicles being placed in a particular class, because of the presence of the identified characteristic, while sharing little else with the other vehicles in its class.

To avoid these problems, one might classify vehicles based on an examination of the vehicle and a determination of its likely use. For instance, one might conclude that all vehicles that are likely to be used for

family transportation purposes should be classed together, as should vehicles used primarily for recreational or commercial purposes. One problem with this approach is that it might be very hard in some instances for a manufacturer to foresee the purpose for which its vehicle would actually be used by purchasers. If the manufacturer were not certain of the class into which a vehicle fell, the manufacturer would not know which safety standards were applicable to the vehicle.

In recognition of the difficulties associated with each one of these three approaches taken by themselves, one could try to combine the best features of all three of the approaches in a classification system. However, when promulgating the initial safety standards, the agency did not have sufficient time to analyze all of these arguments and devise a classification scheme that was based on such an analysis. The Safety Act required the agency to make these initial classifications and issue appropriate safety standards for each vehicle class very quickly. The Safety Act was signed by President Johnson on September 9, 1966. Section 103(h) of the Safety Act required NHTSA "to issue initial safety standards based upon existing safety standards on or before January 31, 1967," less than five months after the Act was signed into law. In accordance with this directive, the proposed initial safety standards (published at 31 FR 15212; December 3, 1966) took many of its proposed standards directly from the existing ones established by the General Services Administration. The proposed initial safety standards had five basic vehicle types—bus, motorcycle, passenger car, trailer, and truck. The proposal would have defined a passenger car according to its manufacturer's design intent and a physical characteristic (vehicles designed to carry ten persons or less), while a truck would have been defined according to either its manufacturer's design intent or according to how it was used by purchasers (vehicles designed, used, or maintained primarily for the transportation of property). Buses were to be classified according to the manufacturer's design intent and a physical characteristic (designed for carrying ten or more persons), trailers were to be classified according to the manufacturer's design intent (designed for carrying persons or property and for being drawn by another vehicle), while motorcycles were classified according to the physical characteristics of the vehicles.

However, this vehicle classification system that was based on a combination of the three different approaches (design intent, vehicle characteristics, and use) did not represent the agency's considered opinion that the combination approach to vehicle classification was the most desirable. Further, the agency did not determine that this particular combination approach was the best classification scheme that could be devised. Instead, this approach was inherited from the General Services Administration (GSA), as were some of the initial safety standards. In the short time that was available to develop those initial safety standards, the agency determined that the best use of the available time would be to adopt the GSA approach and concentrate on the substantive content of the safety standards.

A final rule specifying the initial safety standards was published on February 3, 1967 (32 FR 2408). This rule largely adopted the vehicle classification system as proposed, but added a new vehicle category. In the final rule, the proposed criteria for classifying vehicles as buses, trailers, and motorcycles were adopted. The passenger car definition was slightly modified to account for the new vehicle class, but it retained the proposed use of the manufacturer's design intent to determine whether a vehicle should be considered a passenger car. The definition of truck was revised to also use the manufacturer's design intent as the basis for classification (designed primarily for the transportation of property or special purpose equipment).

The new vehicle class added in the final rule was that for the "multipurpose passenger vehicle" (MPV). This new class was based on a combination of the manufacturer's design intent and physical characteristics of the vehicle. An MPV was defined as a vehicle "designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation."

As was the case with the proposed classification system, the time constraints imposed by law prevented the agency from analyzing this vehicle classification system fully, and devising the most appropriate vehicle classification system from that analysis. Thus, the agency focused primarily on the fact that there was a group of vehicles that fell within the proposed definition of "passenger car" that also possessed some of the structural characteristics of a "truck." Examples of such vehicles included utility vehicles

with features for off-road operation, motor homes, and campers. These vehicles would have needed far more extensive modifications than other vehicles within the proposed "passenger car" class. Consequently, the leadtime necessary before the passenger car standards took effect would have been much longer than intended by the Safety Act. Additionally, there were an insignificant number of MPV's as compared with passenger cars.

The agency believed it would be inappropriate if it were to delay applying the safety standards to millions of vehicle to accommodate the special needs of some tens of thousands of vehicles. The agency decided that the most appropriate balance of the need to have the passenger car safety standards take effect as soon as possible and the demonstrated need for longer leadtime for a few vehicles that would be classed as passenger cars was to create a new class for these few vehicles. Hence, the MPV class was created. In these circumstances, the agency's desire to establish the most appropriate vehicle classification system was not so compelling as the safety need to put the initial safety standards into effect as soon as possible.

From this summary, it is obvious that the vehicle classification system for the safety standards was developed in an accelerated rulemaking proceeding that limited the agency's opportunity to consider the appropriate factors that should be used to distinguish the various types of vehicles. The final rule neither used a consistent basis for distinguishing vehicles (e.g., manufacturer's design intent, structural characteristics, likely use) nor did it explain why it used one basis for one class of vehicle and a different basis for another class of vehicle.

Notwithstanding these shortcomings, the classification system that was established for the safety standards has functioned fairly well in allowing the manufacturers and the agency to readily determine the appropriate classification of new vehicles. However, there have been questions raised in recent years about how well the classification system has functioned in grouping similar vehicles and about how reasonable its differentiations between vehicle types has become, in light of today's mix of vehicle types in the marketplace. These questions led to a petition for rulemaking asking the agency to reexamine its vehicle classification system.

The Petition of the Insurance Institute for Highway Safety

The Insurance Institute for Highway Safety (IIHS) asked the agency to revise its classification system so that it is consistent with current manufacturing and marketing strategies and is primarily based on the purpose for which a vehicle is used by the public. IIHS alleged that the existing vehicle classification system has become outdated, with the result that the safety standards apply differently to vehicles that are used in the same way by the public. Specifically, IIHS stated that "light trucks and hybrids such as the so called 'minivans' compete for the same market as passenger cars, but do not have to meet several important passenger car safety standards."

The petition argued that the current vehicle classification system is no longer appropriate for several reasons. First, IIHS noted that there have been substantial increases in the production and market share of light trucks and MPV's. Second, it noted a particular shift in market share from station wagons, classified as passenger cars, to minivans, classified as MPV's. Third, IIHS alleged that the distinctions between the various vehicle types are being blurred by changes in design and use of vehicles. As a result, IIHS believed that a new classification scheme should be devised that is based on the vehicle's use by purchasers. Such a system would, according to IIHS, reflect the current state of manufacturing and marketing practices. The agency agreed with the IIHS suggestion that the current vehicle classification system ought to be reexamined, and granted the petition in a letter dated May 7, 1987.

The Advance Notice of Proposed Rulemaking

NHTSA published an advance notice of proposed rulemaking (ANPRM) on the vehicle classification system for the safety standards on October 28, 1987 (52 FR 41475). The ANPRM proposed eight different options for a vehicle classification system, and asked for comments on each of these.

Option 1

This option would simply retain the existing vehicle classification system for the safety standards. This system, with its imperfections and despite the absence of an articulated basis, has allowed both the vehicle manufacturers and this agency to determine the classification of new and existing vehicles.

Option 2

This option would retain the existing definition of truck, which is based on the manufacturer's design intent. It would base a definition of passenger car on the manufacturer's design intent, as is now the case, but would broaden the definition of passenger car to cover all vehicles which are designed primarily as passenger-carrying vehicles. Hence, passenger vans and possibly some utility vehicles would shift from being MPV's to passenger cars. The definition of MPV would continue to be based on the vehicle's physical characteristics, as in now the case, but those characteristics would be more specifically defined. Essentially, this option would continue the scheme set forth in the existing classification system, with some updating to reflect the changes that have occurred since the original classification system was established.

Option 3

This option would eliminate the MPV category from the classification system and add a new category called light truck. The passenger car class would have its name changed to passenger vehicle class, but the existing definition, based on the manufacturer's design intent, would be unchanged. The existing definition of truck would be retained, except that a vehicle would also have to have a gross vehicle weight rating (GVWR) of more than 10,000 pounds to be considered a truck. Vehicles with a GVWR of 10,000 pounds or less would be classed as a light truck if they had certain physical characteristics. Under this option, passenger vans and small utility vehicles would have shifted from the MPV class to the passenger vehicle class. The ANPRM explained that this shift would emphasize the likely use for which each vehicle type was designed.

Option 4

This option would consider both the manufacturer's design intent and the weight in determining a vehicle's classification, since both these attributes may affect the vehicle's safety performance. Under this option, the MPV class would be eliminated, the passenger car class would be split into two classes, a new light truck class would be added, and the definition of truck would be amended to limit that class to vehicles with a GVWR of more than 10,000 pounds. Passenger vans and some utility vehicles would be reclassified as one of the two classes of passenger vehicles.

Option 5

This option was similar to Option 4, except that it substituted vehicle physical characteristics and weight for manufacturer's design intent and weight, in determining a vehicle's appropriate classification. This option would also eliminate the MPV class, limit the passenger car class to 5,500 pounds GVWR, and create two classes of light trucks, one for trucks with GVWR of less than 5,500 pounds, and the other with GVWR of at least 5,500 pounds but less than 10,000 pounds. Passenger vans would be classified as passenger cars.

Option 6

This option did not try to use one factor, such as design intent, physical characteristics, or likely use, to class vehicles. Instead, it attempted to simply update the existing classification scheme, by grouping vehicles into passenger cars, vans, pickup trucks, special purpose vehicles, and trucks. This approach would allow all parties to easily classify all 1988 vehicles, according to objective criteria, without the attendant concerns that are associated with any dramatically different vehicle classification system.

Option 7

This was the most radical change to the classification system of the options set forth in the ANPRM. Under this option, vehicles would be classed as either passenger vehicles or trucks, depending on the vehicle's weight and whether the vehicle was designed primarily to transport people or cargo. All vehicles with a GVWR of less than 5,500 pounds would be classified as passenger vehicles. All vehicles with a GVWR of more than 5,500 pounds would be classed according to whether they were designed primarily to carry people or cargo.

Option 8

This was the least specific of the options set forth in the ANPRM. The concept was to identify vehicle types solely by physical characteristics, and to use at least two physical characteristics to define each class of vehicles.

The agency received 40 comments in response to this ANPRM. All of those comments were considered in developing this proposal, and the most significant comments are discussed below. NHTSA would like to note that this proposal has not adopted the concept of using a fixed weight cutoff point to identify vehicles as "trucks," "light trucks," or "passenger vehicles," as proposed in several of the ANPRM's options. Many of the safety standards

presently use weight cutoff points to identify the vehicles subject to that particular standard. However, the individual standards use several different vehicle weights as cutoff points, with the particular cutoff point for each standard determined in the context of that particular standard. After further consideration and evaluation of the comments on the ANPRM, NHTSA has not been able to identify one single weight cutoff point that should be used to classify vehicles for the purposes of *all* of the standards. Therefore, the agency has decided not to pursue further the concept of using a single weight cutoff point as a means of classifying vehicle types for the purposes of all safety standards. The agency will continue its policy of determining in the context of a particular standard whether a weight cutoff point is necessary, and, if so, what that cutoff point should be.

Purpose of this Rulemaking

Judging from some of the comments to the ANPRM, the agency believes that there may be some possible misunderstanding of the purpose of this rulemaking. For instance, three individuals and the Injury Prevention Resource and Research Center commented that passenger car standards should be applied immediately to "minivans." ChemLawn, in its comments, asked that head restraints be required in all light trucks. The American Insurance Association, IIHS, the Center for Auto Safety, and the State of New York's Department of Motor Vehicles and Attorney General all urged that the passenger car standards be made immediately applicable to "minivans" and compact pickup trucks.

The comments suggest that the commenters believe that this vehicle classification rulemaking ought to begin by deciding which safety standards should apply to each of the various vehicle types produced, and then devise a classification system that best achieves the desired result. Indeed, this is how the vehicle classification system was treated in the establishment of the initial safety standards. However, NHTSA believes that following the same approach would not necessarily result in a vehicle classification system that is any more appropriate than the existing one. Instead, the agency believes that this rulemaking ought to determine what physical characteristics or design intents of particular vehicles are so significantly different from those of other vehicles that vehicles possessing those characteristics or design intents ought to be treated

separately for the purposes of the safety standards generally. These groupings should then be the basis for the vehicle classification system. The question of the applicability of the standards to particular vehicles can and will be examined in a separate, subsequent rulemaking.

With this approach, it should be clear that the focus of this rulemaking is *not* whether a particular requirement or requirements that currently apply to one class of vehicles (e.g., automatic crash protection or center high mounted stop lamps) should be extended to apply to additional vehicle types. Assuming the agency makes the requisite statutory determinations, NHTSA could extend any individual standard or group of standards to additional vehicles, without making any changes to the existing vehicle classification system. Such extensions would, however, do nothing to resolve the problems associated with the current classification system.

The ANPRM noted that the problems with the current vehicle classification system have arisen primarily in the MPV class. A vehicle is an MPV for the purposes of the safety standards if it is designed to carry 10 persons or less and is "constructed either on a truck chassis or with special features for occasional off-road operation." A "chassis" means the basic operating core of the motor vehicle including engine, frame, and other essential structural and mechanical parts. When this definition was promulgated, most vehicles were constructed by attaching the vehicle body to a separate frame, with the frame providing the vehicle's structural strength. With separate body-frame construction, one could generally determine if the vehicle was constructed on a truck chassis by considering the weight and size of the frame members, and whether there was any reinforcement or other strengthening of the frame.

Today, many vehicles have unitized construction, which means that the vehicle body and vehicle frame are a single piece instead of separate pieces. For this reason, and because of a blurring of the previous design distinctions between at least some station wagons and small passenger vans, it is far more difficult to determine whether a vehicle with unitized construction is built on a "truck chassis." NHTSA said the following in a December 1, 1983 letter to Mr. Nakaya of Mazda, in response to a question about how a passenger minivan using unitized construction would be classified for the purposes of the safety standards:

The fact that a common chassis is used in a family of vehicles, one member of which is classified as a "truck," is evidence that the common chassis is a "truck chassis." However, further evidence is needed to demonstrate that the chassis has truck attributes, such as information showing the design to be more suitable for heavy duty, commercial operation than a passenger car chassis. This further evidence is necessary since otherwise the introduction of a cargo carrying version of an existing passenger car could result in the reclassification of the passenger car into an MPV, if the agency only considered the issue of whether a common chassis is used.

This excerpt illustrates the difficulties that have arisen in trying to determine whether a vehicle built with unitized construction is built on a "truck chassis." NHTSA is concerned that the "truck chassis" criterion for classification as an MPV is becoming a less objective, and therefore less useful, tool for distinguishing MPV's from passenger cars.

The agency has similar concerns about the criterion that vehicles are MPV's if they have "special features for occasional off-road operation." This general reference does not clearly specify what "features" are sufficient to classify a vehicle as an MPV. It is not clear what features other than 4-wheel drive and high ground clearance are enough to classify a vehicle as an MPV. For example, one might reasonably argue, as Ford did in its comments to the ANPRM, that a vehicle equipped with skid plates and a low range transfer case has special features for off-road operation. It is not clear under the present definition of MPV whether a vehicle that has these features, but whose ground clearance is comparable to a normal sedan, would be classed as an MPV.

Finally, the MPV class currently includes two seemingly disparate vehicle types, passenger vans and on/off road vehicles. It is not obvious that these vehicle types are sufficiently similar to treat them identically for the purposes of the safety standards generally. Indeed, one might argue, as IIHS did in its petition, that there is no inherent need to treat passenger vans differently from passenger cars for the purposes of the safety standards. On the other hand, on/off road vehicles may generally need to be treated separately from passenger cars if these vehicles are to retain the physical characteristics that allow them to be used off-road. The significant differences between the two types of vehicles currently classified as MPV's may confuse the task of determining the best application of the safety standards.

NHTSA believes these issues regarding the division of the vehicle population into groups of similar vehicles are significant in their own right, and that they should be considered in their own right. If the question of whether individual safety standards should apply to a particular group or groups of vehicles is intermingled with this question, the result will reflect primarily the agency's decision about whether or not the standards should be extended to those additional vehicles.

It is important to remember that most of NHTSA's existing safety standards already apply to light trucks and MPV's, as well as passenger cars. Nevertheless, NHTSA agrees that the question of whether the relatively few standards that apply only to passenger cars should be extended to additional types of vehicles is significant. Indeed, the agency acknowledges that this question may be of greater ultimate significance than the best system of classifying vehicles for the safety standards. That is why NHTSA believes that if this question is combined with the question of the most appropriate vehicle classification system, the resulting vehicle classification system would just be an ancillary result of the agency's decision to extend or not extend the standards to additional vehicle types.

The agency has begun the process of examining each of the standards to determine whether they should be extended to additional vehicle types. On November 23, 1987, the agency published final rules establishing dynamic testing requirements under Standard No. 208 for light trucks and MPV's (52 FR 44898) and extending the requirements of Standard No. 204 to more light trucks, buses, and MPV's (52 FR 44893). On June 24, 1988 (53 FR 23766), the agency extended the requirements of Standard No. 118, *Power-Operated Window Systems*, to light trucks.

The agency acknowledges that this rulemaking action by itself will not extend particular passenger car standards to other vehicle types, as urged by the above-mentioned commenters. However, those commenters should recognize that changes in the vehicle classification system are not necessary to change any particular standard's applicability. Indeed, if the agency made the requisite statutory determinations, the agency could have proposed under the existing classification system that the requirement for center high mounted stoplamps apply to MPV's and trucks under a certain weight, for example. As

discussed in detail in the agency's April 1988 report to Congress entitled *Safety Programs for Light Trucks and Multipurpose Passenger Vehicles*, NHTSA has already embarked on an examination of whether to extend safety standards to additional existing vehicle types under the current vehicle classification system. These agency actions will proceed regardless of the outcome of this rulemaking action. NHTSA believes it is appropriate for a rulemaking action examining the vehicle classification system to proceed in its own right, and not be confused with issues relating to any particular standard's applicability to certain vehicles.

Some commenters implied that this examination of the vehicle classification system has no significance in its own right. For example, the Attorney General of the State of New York commented that a separate examination of vehicle classification would be "an academic exercise." The Center for Auto Safety commented that a separate examination of vehicle classification was a "meaningless semantic goosechase."

NHTSA strongly disagrees with these comments for a number of reasons. First, the current MPV class depends on a vehicle being constructed either on a "truck chassis" or with "special features" for occasional off-road operation. With the changes in vehicle construction, the meaning and application of these terms become less clear, in turn making it more difficult to classify vehicles and determine with which standards the vehicles must comply. Fundamental notions of fairness suggest that if NHTSA is going to require Type A vehicles to meet certain requirements, it must clearly specify a means of differentiating Type A vehicles from Type B, C, and D vehicles. The Supreme Court has indicated that, in certain circumstances, the failure of the Federal government to clearly identify the criteria that are used in making a decision (e.g., a particular vehicle is a Type A vehicle, not a Type B vehicle) could violate the due process clause in the Fifth Amendment of the Constitution. *Matthews v. Eldridge*, 424 U.S. 319 (1976).

Second, the classification system affects every vehicle and every safety standard. This effect is not just academic and far from meaningless. When a standard applies to a vehicle class, vehicle manufacturers must certify that every single vehicle it manufactures of that class complies with the standard. Similarly, all of the agency's analyses of both existing and potential new safety standards begin

with the vehicles grouped in accordance with the classification system. Hence, the groupings established by the classification system have a real influence on the applicability of each individual standard to groups of vehicles.

Third, as noted above, the classification system that is currently used was never fully analyzed on its own merits. Instead, it was established primarily to accommodate the agency's need to comply with the statutory mandate for expeditiously issuing and implementing the initial safety standards. In general, the issue of applying particular standards to particular vehicles is a more pressing issue than the vehicle classification system, so it is this issue to which the agency and the public devote most of their attention. When the classification system is shaped to achieve the desired applicability of standards, neither the public nor the agency have an opportunity to fully consider the potential long term effects of the classification system that is established. NHTSA concludes that it is appropriate to use this rulemaking as a forum to ensure that any long term implications of a new classification system are fully considered and that the agency selects as the new system the one having the most appropriate long term effects.

NHTSA would like to note that this proposal for a new system of classifying vehicles would apply only for the purposes of the Safety Act and the safety standards and regulations issued thereunder. This proposal would not affect the classification of vehicles under the fuel economy, emissions, bumper, and theft prevention standards, nor would it affect the classification of vehicles for the purposes of Customs duties. All of these regulations derive their authority from statutes other than the Safety Act, and those differing authorizing statutes may require a different classification for vehicles than is proposed in this notice for classifications made under the Safety Act.

Effect of this Rulemaking on the Application of Standards

The criteria in sections 103 (a) and (f) of the Safety Act require the agency to make certain determinations when it amends a safety standard. Amendments to a safety standard include decisions to extend the standard to a particular vehicle type or to revoke its applicability to a particular vehicle type. To extend a standard to a new vehicle class, NHTSA would have to show that the extension of the standard meets the

need for safety for that particular vehicle class, and meets all of the other criteria set forth in sections 103(a) and (f). Conversely, to revoke a standard's applicability to a vehicle class, NHTSA would have to show that the standard no longer meets the need for safety, or perhaps never met the need for safety, for that vehicle class, or that the standard fails to meet one of the other criteria set forth in sections 103 (a) and (f) for that vehicle class.

Because of these statutory requirements, the agency has since its inception always analyzed each new application of a standard to determine whether application of the standard is appropriate for each vehicle class. The agency has always made such an analysis on a standard-by-standard basis, since differences in particular vehicle characteristics (e.g., vehicle weight) may affect the appropriateness of applying a standard to one vehicle class, yet be completely irrelevant to a determination of the appropriateness of applying that standard to another vehicle class. Alternatively, particular vehicle characteristics (e.g., vehicle weight) may affect the appropriateness of applying a particular standard, regardless of vehicle class.

In the ANPRM, the agency explained that this proposal would ensure that the adoption of any proposed changes in the vehicle classification system would *not* result in potential reductions in the level of safety offered in any vehicle. The example given in the ANPRM was that if the passenger car class were replaced by a broader passenger vehicle class, including those vehicles previously classified as passenger cars and some vehicles previously classified as something other than passenger cars, the agency would also propose to amend the standards' application sections to ensure that any standard that applied to the passenger car class would continue to apply to those vehicles in the passenger vehicle class that were formerly classified as passenger cars. In other words, this rulemaking will *not* result in any reduction in safety, because every standard that applies to vehicles under the existing classification system will also apply to those vehicles under this proposed new classification system.

The ANPRM also stated that the agency had not decided whether to allow the modification of the vehicle type definitions to result in the expanded application of any standard. Such an expansion could occur if, for example, some vehicles were moved from the MPV category under the existing classification system to the

passenger car category under a proposed new vehicle classification system. The unanswered question in the ANPRM was whether these vehicles that were moved to a different category under the proposed new vehicle classification system should be immediately subject to the standards applicable to the new category. See 52 FR 41484; October 28, 1987.

No commenters to the ANPRM directly addressed this issue. NHTSA has tentatively decided that this proposal should *not* extend any standard to any vehicles not currently subject to that standard. As explained above, the agency is statutorily required to make certain determinations before extending existing standards to any new groups of vehicles. NHTSA has already begun an expedited review of whether the applicability of any standards should be extended to include additional vehicle types.

Additionally, as noted above, the agency wants to examine the issue of the vehicle classification system apart from its examination of whether any individual standard should be extended to additional vehicles. The most appropriate grouping of vehicles for any one particular standard may not be the most appropriate grouping of vehicles for any other standard. Since the vehicle classification system applies to all of the safety standards, it can best be formulated without focusing on the need to group vehicles in some particular manner to achieve a desired result for one or two of the standards. By removing the question of the applicability of the standards entirely from this rulemaking, NHTSA believes that the vehicle classification system that results would be based on considerations of the reasons and purpose for the classification system, instead of the desire to extend the applicability of one particular standard.

To achieve this intent, any final rule establishing a new vehicle classification system would include amendments to the applicability sections of standards to ensure that vehicles that are moved into a different class are *not* subject to any standards to which they were not subject under the existing vehicle classification system. For example, if some passenger vans were moved into a class that included passenger cars, those passenger vans would not be subject to the existing passenger car standards as a result of this rulemaking. The question of whether passenger vans, or any other vehicles, should be subject to any additional standards will be answered on a standard-by-standard basis in a separate agency review. Since this

rulemaking is not examining any such questions, it would be inappropriate for the classification system that results from this rulemaking to extend standards to a group of vehicles.

NHTSA would like to note that this new classification system would be used immediately for the purposes of any new safety standards or for any additional requirements for existing safety standards. In either case, the agency would use this new classification system as the starting point for its analysis of whether the new requirements were "appropriate for the particular type of motor vehicle for which it is prescribed."

Proposed Options for a Vehicle Classification System

This notice proposes two distinct options for a vehicle classification system for the safety standards. These options represent two different philosophical approaches to the purpose and effects of the classification system.

Option A

The first approach for a new classification system is a derivative of Option 6 proposed in the ANPRM. This approach represents an update of the existing classification scheme. It would eliminate the current MPV category and classify some of the current MPV's as passenger cars and classify the balance in two new categories, vans and special purpose vehicles. Cargo vans would be moved from the current truck class into the new van class. All other vehicles currently classed as trucks or passenger cars would continue to be classified as such under this proposal. The existing bus, trailer, and motorcycle classes would not be affected by this proposal.

The definitions of vehicle classes under Option A would be as follows:

"Passenger car" means a motor vehicle with motive power, except a van, truck, special purpose vehicle, motorcycle, or trailer, that has 10 or fewer designated seating positions.

"Special purpose vehicle" means a motor vehicle with motive power, except a bus, motorcycle, or trailer, that has greater passenger carrying volume than cargo carrying volume and at least four of the following characteristics, calculated when the vehicle is at curb weight on a level surface, with the front wheels parallel to the vehicle's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:

- (1) Approach angle of not less than 28 degrees.
- (2) Breakover angle of not less than 14 degrees.

(3) Departure angle of not less than 20 degrees.

(4) Running clearance of not less than 8 inches.

(5) Front and rear axle clearances of not less than 7 inches each.

"Truck" means a motor vehicle with motive power, except a special purpose vehicle, van, motorcycle, bus, or trailer that is designed primarily for the transportation of property or special purpose equipment, including vehicles capable of transporting property on an open bed.

"Van" means a motor vehicle with motive power, except a special purpose vehicle, motorcycle, bus, or trailer, that has an unpartitioned cargo area encompassing all designated seating positions and all of the cargo area, and no body section, including the bumper, that extends more than 30 inches forward of the forwardmost point on the glazing within the windshield daylight opening area.

No changes are proposed for the existing definitions of "bus," "motorcycle," and "trailer."

Under this option, vehicles would be classified according to the following hierarchy.

1. Does the vehicle meet the definition of a motorcycle or trailer? If so, it is classified as that.

2. If the vehicle has more than 10 designated seating positions and is not a trailer, it is classified as a bus.

3. If the vehicle is not a bus, motorcycle, or trailer, does it meet the definition of a special purpose vehicle? If so, it is classified as that.

4. If the vehicle is not a bus, motorcycle, trailer, or special purpose vehicle, does it meet the definition of a van? If so, it is classified as that.

5. If the vehicle is not a bus, motorcycle, trailer, special purpose vehicle, or van, does it meet the definition of a truck? If so, it is classified as that.

6. If the vehicle is a motor vehicle and does not meet the definition of bus, motorcycle, trailer, special purpose vehicle, van, or truck, then it is classified as a passenger car.

The agency believes that there would be two distinct advantages in implementing this proposed approach. First, the selection of this approach would mean that the classification system for the safety standards would use the same terms for vehicles that are used by persons collecting data on vehicle crashes, by the industry, and by many States in vehicle registration. Since these terms and classifications are so widely used, the agency could more easily track the comparative safety performance of the various vehicle

classes. Second, this approach would allow all parties to easily classify all existing vehicles, according to objective criteria, without the attendant concerns associated with some radically different vehicle classification system.

Under this approach, the existing definition of "passenger car" would be revised to substitute a physical characteristic of the vehicle (10 or fewer designated seating positions) for the currently-specified manufacturer's design intent (designed for carrying 10 persons or less). NHTSA notes that this difference is one of semantics, since the current definition of "passenger car" is applied as though it reads 10 or fewer designated seating positions. Both this proposed definition and the existing passenger car definition are residual categories. That is, notwithstanding the fact that a vehicle has 10 or fewer seating positions, if that vehicle also satisfies the definition of any of the listed vehicle classes, it would be treated as part of that other class, not as a passenger car. If, on the other hand, a vehicle has 10 or fewer seating positions, but fails to satisfy the definition of one of those listed vehicle classes, it would be treated as a passenger car. NHTSA believes that all vehicles that are currently classified as passenger cars would continue to be classified as passenger cars under this proposed new definition of that term.

The definition of truck would continue to rely on the manufacturer's design intent to determine if a vehicle is a truck, just as the existing definition does, and would use the same language as the existing definition to express the necessary design intent (designed primarily for the transportation of property or special purpose equipment). The proposed new definition would add a phrase to explicitly include a pickup (vehicle capable of transporting property on an open bed) in the "truck" category.

Like the passenger car category, this proposed truck category would be residual. Any vehicles that satisfied the definition for "van" or "trailer" would be placed in that category, not in the truck category. The agency believes that most vehicles that are classified as trucks under the existing definition would continue to be classified as trucks under this proposed definition.

The major exception to this general statement would be cargo vans. Cargo vans are currently classified as trucks, because they are designed primarily to transport property. Passenger vans are currently classified as MPV's, because they are built on a truck chassis. With the proposed elimination of the MPV category, all vehicles that are currently

classified at MPV's would be reclassified as either a van, a special purpose vehicle, or a passenger car. The proposed new "van" category would include all passenger vans, currently classed as MPV's, and all cargo vans, currently classed as trucks.

Several vehicle manufacturers had suggested the creation of a "van" category in their comments on the ANPRM. These commenters stated that both the passenger and cargo versions of a van are produced from the same vehicle design. According to these commenters, although the current classification system treats the passenger version of a van as an MPV and the cargo version as a truck, the requirements for MPV's and trucks are sufficiently similar that the different classifications of essentially the same vehicle have not posed compliance difficulties. However, these commenters asserted that serious compliance difficulties could arise if passenger and cargo vans were put into different vehicle classes that were subject to substantially different requirements.

The agency believes this argument may have merit. This new class would reflect the fact that both cargo and passenger vans have the same design and physical characteristics that are substantially different from most vehicles in other classes. An exception might be those station wagons that resemble some small passenger vans.

The proposed definition of van set forth above was derived from the Environmental Protection Agency's (EPA) definition of "van" for fuel economy purposes, set forth at 40 CFR 600.002-85(39). It would define vans in terms of two physical characteristics that EPA has determined distinguish vans from other vehicles. The first such characteristic is an unpartitioned enclosed area encompassing all designated seating positions and all of the cargo area. This characteristic alone distinguishes vans from sedans and pickups, which have separate passenger seating areas and cargo areas. However, this characteristic of vans is also shared by station wagons and may be shared by hatchback models that do not have a cargo covering of some sort.

The term "unpartitioned enclosed area" refers to an area that does not have fixed part of the vehicle fully separating some of the cargo area or designated seating positions from the other designated seating positions. For example, a bench seat would not fully separate a vehicle, unless that the top of the bench seat touched the interior roof of the vehicle and the sides of the bench seat touched both interior sides of the

vehicle. Thus, a typical bench seat installation would not be considered a "partition" within a vehicle. Similarly, many step-vans have sliding doors that allow access for a driver or passenger to move from the seating area to the cargo area. Since these sliding doors are not fixed, the wall to which the sliding door is attached would not be considered a "partition" within a vehicle.

However, the determination of whether a vehicle has an "unpartitioned" enclosed area is made with the vehicle configured with all available seats installed and in position to accommodate passengers. Thus, if the rear seat of a vehicle touches a package shelf, so as to completely separate the truck from the passenger area, the vehicle would not be considered a van under this proposed definition. This is true even if the package shelf can be removed and the rear seat folded down to allow unimpeded access to the trunk. Commenters are invited to address this proposed interpretation of "unpartitioned," and whether it serves to adequately distinguish step-vans and like vehicles from conventional passenger cars with fold-down seats and movable package shelves.

The agency intends this new "van" class to exclude any vehicles that are classified as passenger cars under the existing classification system. Accordingly, the agency must use a second physical characteristic of vans to distinguish them from passenger cars. NHTSA is proposing to use the cowl length of vans as this second physical characteristic, just as EPA does. This definition proposes that a vehicle be considered a van only if no body section, including the bumper, extends more than 30 inches forward of the forwardmost point within the windshield daylight opening area. The term "daylight opening" area is used in the same way it is used in the Society of Automotive Engineers (SAE) Recommended Practice J903c, at section 2.22. In simplified terms, the agency is referring to the windshield glazing that is not covered by the molding. For a vehicle to meet this proposed definition of a van, its front bumper or other forwardmost body point would have to be not more than 30 inches forward of the forwardmost point on the windshield glazing that is not covered by molding.

This proposal reflects the agency's tentative determination that the complete enclosure of an undivided passenger and cargo area, combined with the short vehicle cowl are the distinctive characteristics that can be used to differentiate vans from other vehicles. Any vehicle that has these

characteristics would be considered a van, unless that vehicle met the criteria for classification as a special purpose vehicle or bus. In other words, a vehicle that met the definitions of both van and either truck or passenger car would be classified as a van.

Chrysler's comments on the ANPRM stated that the 30 inch cowl limit would result in its compact vans (the Caravan and Voyager) being classed as passenger cars instead of vans. Chrysler suggested that the 30 inch cowl limit be raised to 40 inches. NHTSA has not adopted this suggestion, because this proposed definition of "van" is intended to exclude all station wagons and hatchback models of passenger cars. At this time, the agency doesn't know whether raising the cowl length limit to 40 inches would result in some passenger cars being classified as vans. This notice invites the public to submit comments on the cowl length limit that should be used to differentiate vans from vehicles in all other classes, including data on the cowl length of vans, small station wagons, and hatchbacks. Additionally, the agency is interested in learning whether there are any hatchback passenger car models that do not have a partition between the seating and cargo areas and, if so, the cowl length of those models.

Although the agency is proposing to use the cowl length limit in conjunction with the enclosed unpartitioned seating and cargo area as the physical characteristics of vans that differentiate them from other vehicles, the agency is not certain that these are the essential physical characteristics that distinguish vans from other vehicles. The agency believes that most observers have a clear notion of the differences between vans and station wagons, based on some distinctive physical characteristics of vans. As noted above, the physical characteristics set forth in this proposed definition for vans (enclosed unpartitioned seating and cargo area and short cowl) are similar to the physical characteristics of some small station wagons. This may suggest that the physical characteristics of vans set forth in this proposed definition are not the same characteristics that observers intuitively use to distinguish station wagons and vans.

Other physical characteristics that may differentiate vans from station wagons include the height of the seating reference point above the ground (vans are typically higher than passenger cars) and the interior height of the occupant compartment, measured from the floor to the ceiling (the occupant compartment of vans tends to be

"taller" than the occupant compartment of passenger cars). It could be that either of these characteristics or some other characteristics, combined with one or both of the proposed characteristics, would more accurately describe the characteristics that observers intuitively use to distinguish vans from other vehicles.

Some of the commenters to the ANPRM addressed the possibility of using the height of the seating reference point as a means of distinguishing vans from passenger cars. Ford commented that the height of the seating reference point "differentiates poorly among different types of vehicles." However, Ford also commented that its cars had a height of between 17.2 and 20.7 inches, while the lowest measurement for Ford's trucks and MPV's was 25.7 inches. Chrysler and Range Rover commented that the height of the seating reference point could not be used by itself, but might be appropriate in combination with other characteristics. Volkswagen supported the use of seating reference point height to distinguish vans from other vehicles, and suggested that a 30 inch minimum height for the seating reference point for a vehicle to be considered a van.

This notice again asks for comments on the criteria that can be used to distinguish vans from other vehicles, and especially asks commenters to provide data showing how successfully any suggested criteria would distinguish between vans and passenger cars.

The other proposed new vehicle class that would cover some vehicles currently classed as MPV's is the "special purpose vehicle." The vehicles proposed to be included in this class are those that have the physical characteristics that permit high ground clearance and give greater passenger-carrying volume than cargo-carrying volume. This proposed definition would use these particular physical characteristics to differentiate special purpose vehicles from all other vehicle types, because the ground clearance would allow these vehicles to traverse the uneven surfaces, rocks, and obstacles on off-road trails. Any vehicle that meets the definition of a special purpose vehicle would be classified as such, even if that vehicle also meets the definition of a van or a passenger car.

The specified dimensions for determining whether a vehicle has high ground clearance are taken directly from NHTSA's fuel economy classification regulation (49 CFR § 523.5(b)(2)). These dimensions were developed in 1976 specifically for that regulation. In GM's comments to the ANPRM, it said that

only one of its vehicles designed for off-road use complies with four of the five criteria proposed for "special purpose vehicles." According to GM, this suggests that these proposed criteria are not adequate to properly classify all vehicles designed for off-road use. NHTSA does not agree with this assertion. These criteria have successfully been used for more than 10 years to identify vehicles produced by all manufacturers that have the necessary clearance for extended off-road operation. The fact that some of GM's vehicles do not satisfy these criteria might just as likely indicate that those vehicles are not designed for extended off-road use as that the criteria are deficient.

In its comments to the ANPRM, Ford suggested that skid plates and low range transfer cases are equally good evidence of off-road capability. NHTSA tentatively disagrees with this assertion. There are a number of features, including those identified by Ford, that would enable a vehicle to function better when travelling off-road. However, a vehicle equipped with all these features will not be able to travel off-road for long if the vehicle does not have high ground clearance. Hence, the agency has tentatively determined that high ground clearance is the physical characteristic that distinguishes these vehicles from others. The public is specifically invited to comment on this tentative determination, and explain why the commenter believes some other characteristic or combination of characteristics would better serve to identify these special purpose vehicles.

The agency would like to explain why it has not proposed 4-wheel drive as a physical characteristic of these special purpose vehicles. 4-wheel drive is now offered on many passenger car models. Many of these 4-wheel drive cars do not have high ground clearance or any other features necessary for off-road operation. Therefore, the agency believes that 4-wheel drive *by itself* is not a physical characteristic that differentiates off-road vehicles from other vehicles. The agency also considered proposing a combination of the high ground clearance features and 4-wheel drive as the characteristics that distinguish special purpose vehicles from other vehicles. However, the agency has tentatively determined that high ground clearance by itself is a sufficient distinction between special purpose vehicles and other vehicles, for the reasons explained above.

The second physical characteristic that this proposed definition would use to determine if a vehicle is a special

purpose vehicle is that it has greater passenger carrying than cargo carrying volume. Inclusion of this characteristic in the definition would ensure that off-road versions of pickup trucks would be classified with other pickup trucks as trucks, not as special purpose vehicles. Although the off-road versions of pickup trucks may share the high ground clearance characteristic with special purpose vehicles, they share every other characteristic of pickup trucks. Accordingly, the agency has tentatively determined that those pickups should be treated just like all other pickup trucks for the purposes of the safety standards under this option.

The agency recognizes that it must define the terms "passenger carrying volume" and "cargo carrying volume" in any final rule on this subject. The ANPRM indicated the agency's belief that a combination of the EPA's interior volume index, as calculated in accordance with 40 CFR § 600.315-82, and the Society of Automotive Engineers' Motor Vehicle dimensions, as specified in SAE J1100, would yield reasonable definitions of "passenger carrying volume" and "cargo carrying volume."

The agency's current intention is to measure "passenger carrying volume" in much the same fashion as front seat volume and rear seat volume are measured by EPA in 40 CFR 600.315-82. "Cargo carrying volume" could be measured as in SAE J1100, except that the appropriate length dimension may be something substantially less than L204 (the horizontal distance from the upper rear surface of the seat back of the front seat to the forwardmost interior surface of the closed tailgate). The agency has tentatively determined that this length dimension would greatly expand what the agency intends to be the "cargo carrying volume." NHTSA currently thinks it ought to exclude all areas that are included in "passenger carrying volume" from its calculations of "cargo carrying volume."

NHTSA's planned approach would be close to the EPA approach set forth in 40 CFR 600.315-82(g)(1)(iii). That section specifies that EPA calculates the cargo volume index of station wagons using the length dimension of L205 (the horizontal distance from the upper rear surface of the seat back of the *second* seat to the forwardmost interior surface of the closed tailgate). In other words, the EPA approach intentionally does not take into account the fact that the second seat can be folded down or removed to increase the cargo volume. The agency currently plans to use the EPA approach with one modification;

i.e., NHTSA would define the length dimension for "cargo carrying volume," by specifying that length shall be measured from the rear upper surface of the seat back of the rearmost seat in the vehicle.

NHTSA understands that there are many vehicles that have areas with seats for passengers that can also be used as cargo carrying areas. These vehicles include passenger vans with readily removable seats and passenger cars and trucks with rear seats that fold down. The agency believes that the presence of the seats shows that this area is intended to be used for carrying passengers as well as being used for carrying cargo. If the area were intended to be used solely for carrying cargo, the agency believes the vehicle would not have seats in the area, just as cargo vans do not have seats in the cargo area. For cargo-carrying vehicles, seats in the cargo area would represent an inconvenience for the user, because they would have to be folded down or removed, far more often than they would represent a convenience for the user by permitting passengers to ride in those seats. If the vehicle has seats in that area, the agency believes this represents the manufacturer's judgment that those seats will be convenient for the vehicle user, by permitting passengers to ride in the seats, at least as frequently as they will be inconvenient for the vehicle user, by requiring the user to fold down or remove the seats prior to loading cargo. Given this implicit judgment by the vehicle manufacturer, the agency believes that this area should be considered part of the "passenger carrying volume" and not considered as part of the "cargo carrying volume."

In its comments on the ANPRM, Ford recommended a different approach. According to that commenter, the agency should measure cargo carrying volume from the rearmost seat that lacks a quick release feature, like a lever. This suggestion would consider fold-down seats as part of the passenger carrying volume, but would consider an area with removable seats as part of the cargo carrying volume. Ford did not explain the basis for its recommendation.

Commenters are specifically invited to discuss the issue of how to measure cargo carrying volume and passenger carrying volume, and to explain how areas that have seats installed should be treated in making those measurements. The agency is particularly interested in the reasons why commenters believe their suggestions are the most appropriate way to make such

measurements, e.g., explain how the selection of L204, L205 or some other horizontal measurement would affect which vehicles are classified as special purpose vehicles.

Option B

This option represents a different approach to the question of classifying vehicles. Option A represents an attempt to update the existing vehicle classification system, by eliminating the MPV category. It attempts to group vehicles in classes primarily according to physical characteristics and to be consistent with current groupings used by the industry and many States. Option B would also eliminate the MPV category. However, this option would produce a vehicle classification with fewer categories than Option A. For the purposes of Option B, all vehicles would be classified according to whether they likely to be used primarily for carrying passengers, carrying cargo, or for recreational purposes.

Under Option B, vehicles designed primarily to transport people would be classed as passenger cars, vehicles designed primarily to transport cargo would be classed as trucks, and vehicles designed primarily for recreational on/off-road use would be classed as special purpose vehicles. This option focuses on the likely use of a vehicle, as suggested in the IIHS petition. Since the vast majority of vehicles are intended ultimately to transport either people or cargo, this would group nearly all vehicles into these two classes.

The following definitions would be used under Option B:

"Passenger car" means a motor vehicle with motive power, except a truck, special purpose vehicle, motorcycle, or trailer, that has 10 or fewer designated seating positions.

"Special purpose vehicle" means a motor vehicle with motive power, except a bus, motorcycle, or trailer, that has greater passenger carrying volume than cargo carrying volume and at least four of the following characteristics, calculated when the vehicle is at curb weight on a level surface, with the front wheels parallel to the vehicles longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:

- (1) Approach angle of not less than 28 degrees.
- (2) Breakover angle of not less than 14 degrees.
- (3) Departure angle of not less than 20 degrees.
- (4) Running clearance of not less than 8 inches.
- (5) Front and rear axle clearance of not less than 7 inches each.

"Truck" means a motor vehicle with motive power, except a special purpose vehicle, motorcycle, bus, or trailer that is designed primarily for the transportation of property or special purpose equipment, including vehicles capable of transporting property on an open bed.

No changes are proposed for the existing definitions of "bus," "motorcycle," and "trailer."

Under this option, vehicles would be classified according to the following hierarchy:

1. Does the vehicle meet the definition of a motorcycle or trailer? If so, it is classified as that.
2. If the vehicle has more than 10 designated seating positions and is not a trailer, it is classified as a bus.
3. If the vehicle is not a bus, motorcycle, or trailer, does it meet the definition of a special purpose vehicle? If so, it is classified as that.
4. If the vehicle is not a bus, motorcycle, trailer, or special purpose vehicle, does it meet the definition of a truck? If so, it is classified as that.
5. If the vehicle is a motor vehicle and does not meet the definition of bus, motorcycle, trailer, special purpose vehicle, or truck, then it is classified as a passenger car.

The special purpose vehicle class would be defined in the same way proposed in Option A. NHTSA acknowledges that these vehicles are intended primarily to transport people, and thus could be classified as passenger cars if the philosophy underlying Option B were rigidly followed. However, NHTSA has tentatively determined that it would not be appropriate to apply this philosophy to special purpose vehicles. As explained above, the agency believes that this rulemaking ought to determine what physical characteristics or design intents of particular vehicles are so different from those of other vehicles that vehicles having these design characteristics ought to be treated differently for the purposes of the safety standards generally. For the purposes of this option, the agency has tentatively determined that the high ground clearance and other features that are essential for the off-road operation of special purpose vehicles are so different from any other passenger-carrying vehicles that special purpose vehicles ought to be treated differently for the purposes of the safety standard generally. The agency believes that these special features generally will give rise to different operating characteristics for this type of vehicle.

The agency has also tentatively determined for the purposes of this

option that passenger vans do not have any such physical characteristics or design intents. Under the approach proposed in this option, passenger vans and station wagons would be regarded as sufficiently similar that there is no reason to treat the vehicles differently for the purposes of the safety standards. An example of the similarity is that one of Chrysler's new compact vans was named by Family Circle magazine as the "Family Car of the Year." This award suggests that the editors of that magazine perceived this compact van as having the same physical characteristics and design intent that the editors believe station wagons and other family cars have.

Under this option, a passenger car would be defined in the same way as is proposed under Option A. Like that proposed definition for Option A, the passenger car category under Option B is a residual category. Any vehicle that meets the definition of both passenger car and truck, special purpose vehicle, motorcycle, or trailer would *not* be classified as a passenger car under this approach.

This option would not include a van class, so passenger vans would generally fall into the passenger car class. Many vehicle manufacturers commented on the ANPRM that it would not be appropriate to classify differently cargo vans and passenger vans, since they are different models of the same vehicle and are produced from the same vehicle design. These commenters asserted that substantial compliance difficulties would arise if passenger and cargo vans were put into different vehicle classes that had substantially different requirements applicable to them. In response, the agency notes that passenger vans and cargo vans perform very different functions. There are valid safety reasons to class passenger vans with other passenger carrying vehicles and cargo vans with other cargo carrying vehicles. Indeed, it might be argued that a classification system that does not group together all vehicles whose primary function is to carry passengers, or to carry cargo, is not the most appropriate classification system. This option would respond to that argument by grouping the following as passenger cars:

1. all vehicles currently classified as passenger cars;
2. passenger versions of vans; and
3. any on/off road vehicles with greater passenger carrying volume than cargo carrying volume that do not meet the definition of special purpose vehicles.

This option would define a truck the same way as proposed for Option A. Option B would include cargo vans in the truck category, as well as the vehicles that would be classed as trucks under Option A.

The term "special purpose vehicle" would be defined in the same way as in Option A, for the reasons expressed in that discussion. As previously noted, any on/off road vehicles with greater passenger carrying volume than cargo carrying volume that do not possess the high ground clearance dimensions set forth in the definition of special purpose vehicle would be classified as passenger cars under this option.

Vehicle Classes Not Addressed in the ANPRM

The ANPRM did not consider proposing to amend the definition of "bus" in this examination of the vehicle classification system. However, the ANPRM noted that changes might need to be made to the "bus" definition as a result of the changes made to the three primary existing motor vehicle types (passenger car, MPV, and truck). Three school bus manufacturers offered substantially similar comments to the ANPRM, urging a change to the bus definition. Mid Bus, Inc., Wayne Corporation, and Thomas Built Buses, L.P. all stated that an anomalous situation exists with school buses and MPV's under the current vehicle classification system. Title 49 CFR Part 571 presently defines a bus as "a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons." A school bus is defined as "a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to or from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation."

According to these school bus manufacturers, the current lower limit in the bus definition of "designed to carry more than 10 persons" means that vehicles that are designed to carry 10 or fewer persons are currently classified as MPV's. School vehicles designed to carry more than 10 persons must be certified as complying with all school bus standards. However, these commenters noted that school vehicles designed to carry 10 or fewer persons need not meet any of the school bus standards. This situation is particularly anomalous, according to the school bus manufacturers, when vehicles that are certified as school buses are modified to accommodate children in wheelchairs. If these modifications reduce the seating capacity to 10 or fewer, the modified

vehicle need not comply with any school bus standards. These school bus manufacturers commented that *all* vehicles that are used to transport children to or from school or related events should be required to comply with school bus standards, so that the students will receive the same degree of protection.

The agency is very concerned with the safety protection afforded to school children. Notwithstanding this concern, the agency is not proposing to extend this vehicle classification rulemaking to address the concerns of the school bus manufacturers. The definition of "school bus" set forth in the definition section of Part 571, including the provision that vehicles designed to carry 10 or fewer persons are *not* school buses, is derived from the statutory definition of "school bus" set forth in section 102(14) of the Safety Act (15 U.S.C. 1391(14)). This language indicates that Congress did not intend that *all* vehicles used to transport children to or from school or related events be considered school buses.

Even if the agency were to consider adopting these suggestions, it would be more appropriate to consider questions related to the current school bus definition separately, instead of as one of the subsidiary issues in this vehicle classification rulemaking. In recognition of the importance of issues related to school buses, the agency has historically examined those issues in rulemaking focused on school buses. This allows both the agency and the public to consider fully the implications of any proposed action on school bus safety.

Another commenter, the National Truck Equipment Association (NTEA), suggested that NHTSA consider classifying light trucks manufactured in two or more stages as a separate category from light trucks manufactured in a single stage. The basis for this suggestion is that NTEA believes this would help differentiate passenger-oriented trucks from work-oriented trucks. According to NTEA, vehicles such as ambulances, fire trucks, emergency rescue vehicles, and emergency medical vehicles are not designed for passenger use and are not used to any significant extent as passenger vehicles. Hence, NTEA believes that these vehicles should be classified differently from passenger-oriented vehicles.

To the extent that NTEA is suggesting that a vehicle's likely use is a legitimate consideration for any classification system, the agency concurs with this opinion. However, NHTSA does not concur with the assertion that the number of stages in which a vehicle is

manufactured is by itself any indication of the vehicle's likely use. For instance, all fire trucks ought to be grouped with each other in a rational classification system, irrespective of whether the fire trucks were produced in a single stage or in two or more stages. The fact that a vehicle is manufactured in more than one stage does not of itself affect the manufacturer's design intent for the finished vehicle, the likely use of the finished vehicle, or the physical characteristics of the finished vehicle. Therefore, the agency has not proposed to use multistage manufacture by itself as a basis for distinguishing vehicles under either of the proposed classification systems.

The agency has considered the special circumstances of multistage manufacturers in the context of particular safety standards. For instance, when the agency added dynamic testing requirements for vehicles other than passenger cars to Standard No. 208, NHTSA established GVWR and unloaded vehicle weight limits to minimize the impacts of the amendment on multistage manufacturers. See 52 FR 44898; November 23, 1987. The agency will continue to consider whether there is a need to limit the impact of individual safety standards on multistage manufacturers. However, this determination will be made in the context of the particular safety standard, *not* as an aspect of the vehicle classification system.

Other Motor Vehicle Terms

The ANPRM stated that the agency has begun to develop a list of specific motor vehicle terms that are used but not defined in the definitions of 49 CFR 571.3, which apply to all of the safety standards. The ANPRM continued: "Should the agency continue with this rulemaking proceeding, one element of any future rulemaking would be to simplify terminology by reducing the number of specific vehicle type terms used in the regulations and to replace them with fewer and more general terms." 52 FR 41484; October 28, 1987. Examples of those terms are set forth on that same page of the October 28, 1987 edition of the *Federal Register*.

The agency has decided that the goal of simplifying motor vehicle terms must give way to other priorities. While it would be desirable to get all issues resolved simultaneously, both NHTSA and the public have limited resources to devote to vehicle classification. There is no pressing problem with these terms that needs to be resolved. The terms do not affect safety, and they have not

caused an increased workload. To add this issue to this proposal would only burden and delay an already complex rulemaking. Therefore, NHTSA believes the simplification of motor vehicle terms should not be addressed at this time.

Economic and Other Impacts Associated With This Proposal

NHTSA has analyzed this proposal and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of the substantial public interest in the proposal. Accordingly, a Preliminary Regulatory Evaluation (PRE) has been placed in the public docket for this rulemaking action. A copy of the PRE may be obtained by writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590.

To summarize the PRE, NHTSA believes that this proposal will not have any impacts on costs or benefits. This belief is based on the facts that this notice does not propose to extend any standards to additional vehicles, and that this notice proposes that each vehicle would continue to be subject to the same requirements of the safety standards to which they are subject under the current system of vehicle classification. If the agency proposes to extend the applicability of any existing standard or to establish any new standards for motor vehicles, it will prepare a detailed estimate of the anticipated costs and benefits associated with such an extension in the context of that rulemaking.

Additionally, the agency has analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. Based on this analysis, I hereby certify that this proposed rulemaking will not, if adopted as a final rule, impose any significant economic impacts on a substantial number of small entities. As was true above, this certification is based on the facts that this notice does not propose to extend any standards to additional vehicles, and that this notice proposes that each vehicle would continue to be subject to the same requirements of the safety standards to which they are subject under the current system of vehicle classification. Therefore, NHTSA has tentatively concluded that this proposal will not have any economic impacts on small businesses.

NHTSA has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant effect on the human

environment, if either option is adopted as a final rule. Again, since the adoption of either option in this proposal as a final rule would not relieve any vehicle types from existing requirements or make any vehicle types subject to additional requirements, NHTSA believes this proposal will have no effect on the human environment.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, relating to the principles of federalism. In its comments to the ANPRM, the National Automobile Theft Bureau asserted that any changes to the vehicle definitions used for classifying vehicles for the purposes of the safety standards would impact on existing reporting requirements established by the laws or regulations in several States, without indicating which States would be affected. To investigate this assertion, NHTSA contacted the American Association of Motor Vehicle Administrators (AAMVA), which represents the officials administering motor vehicle regulations in each of the States. The AAMVA representative stated that the proposed new definitions would not affect the vehicle classification systems in place in the various States. Based on this statement by AAMVA, NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. The agency is particularly interested in learning the public's views on the following questions:

1. Do you agree with NHTSA's tentative determination that the MPV category should be eliminated from the vehicle classification system? If so, are either of the proposed options the most appropriate way to reclassify vehicles currently classed as MPV's? If you do not agree that the MPV category should be eliminated, how could the attributes of "constructed on a truck chassis" and "special features for occasional off-road operation" be more objectively defined or replaced? What basis is there for classifying on/off road vehicles and passenger vans in the same category, given their seemingly disparate characteristics?

2. How would each manufacturer's vehicles be categorized under proposed Options A and B?

3. Would these options, particularly Option B, appropriately classify vehicles such as van conversions, recreational vehicles, motor homes, and van campers? If the commenter believes such vehicles are inappropriately

classified, why? What features of those vehicles would be a basis for classifying them in a different category?

All comments must not exceed 15 pages in length. (49 CFR 553.21). It is requested but not required that 10 copies of the comments be submitted. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.3 [Amended]

2. The definitions in § 571.3 would be amended in one of the two ways set forth below:

Option A.

a. The definition of "multipurpose passenger vehicle" in § 571.3 would be removed.

b. The definitions of "passenger car" and "truck" in § 571.3 would be revised to read as follows:

"Passenger car" means a motor vehicle with motive power, except a van, truck, special purpose vehicle, motorcycle, or trailer, that has 10 or fewer designated seating positions.

"Truck" means a motor vehicle with motive power, except a special purpose vehicle, van, motorcycle, bus, or trailer that is designed primarily for the transportation of property or special purpose equipment, including vehicles capable of transporting property on an open bed.

c. A new definition of "special purpose vehicle" would be added to § 571.3, to appear after the definition of "service brake" and before the definition of "speed attainable in 1 mile," and a new definition of "van" would be added to § 571.3, to appear after the definition of "95th percentile adult male" and before the definition of "vehicle fuel tank capacity", to read as follows:

"Special purpose vehicle" means a motor vehicle with motive power, except a bus, motorcycle, or trailer, that has greater passenger carrying volume than cargo carrying volume and at least four of the following characteristics, calculated when the vehicle is at curb weight on a level surface, with the front wheels parallel to the vehicle's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:

- (a) Approach angle of not less than 28 degrees.
- (b) Breakover angle of not less than 14 degrees.
- (c) Departure angle of not less than 20 degrees.
- (d) Running clearance of not less than 8 inches.

(e) Front and rear axle clearances of not less than 7 inches each.

"Van" means a motor vehicle with motive power, except a special purpose vehicle, motorcycle, bus, or trailer, that has an unpartitioned cargo area encompassing all designated seating positions and all of the cargo area, and no body section, including the bumper, that extends more than 30 inches forward of the forwardmost point on the glazing within the windshield daylight opening area.

Option B.

a. The definition of "multipurpose passenger vehicle" in § 571.3 would be removed.

b. The definitions of "passenger car" and "truck" in § 571.3 would be revised to read as follows:

"Passenger car" means a motor vehicle with motive power, except a truck, special purpose vehicle, motorcycle, or trailer, that has 10 or fewer designated seating positions.

"Truck" means a motor vehicle with motive power, except a special purpose vehicle, motorcycle, bus, or trailer that is designed primarily for the transportation of property or special purpose equipment, including vehicles capable of transporting property on an open bed.

c. A new definition of "special purpose vehicle" would be added to § 571.3, to appear after the definition of "service brake" and before the definition of "speed attainable in 1 mile," to read as follows:

"Special purpose vehicle" means a motor vehicle with motive power, except a bus, motorcycle, or trailer, that has greater passenger carrying volume than cargo carrying volume and at least four of the following characteristics, calculated when the vehicle is at curb weight on a level surface, with the front wheels parallel to the vehicle's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:

- (a) Approach angle of not less than 28 degrees.
- (b) Breakover angle of not less than 14 degrees.
- (c) Departure angle of not less than 20 degrees.
- (d) Running clearance of not less than 8 inches.

(e) Front and rear axle clearances of not less than 7 inches each.

Note.—If either Option A or Option B were adopted as a final rule, the agency would amend the applicability sections of each of the Federal Motor Vehicle Safety Standards, to ensure that every vehicle was subject to the same requirements under Option A or Option B as it is under the existing classification system. Additionally, some regulations, such as those at 49 CFR 565, 566, 575, and 585, use the vehicle classification terms set forth in Part 571. Each such regulation and every standard would be amended to ensure that no vehicle was subject to any different requirements as a result of adopting Option A or Option B as a final rule. To illustrate the agency's intent in this area, the following are examples of how Standard Nos. 105 and 208 would be amended under either Option A or Option B. These are illustrative examples only, and any amendments in a final rule would amend every safety standard, not just these two.

To accomplish this, the agency would replace references to the MPV class with the classes of vans and special purpose vehicles, under Option A and with the class of special purpose vehicles, under Option B. This would ensure that vehicles that move from the current MPV category to either of these new categories will remain subject to the same requirements. Some vehicles would move from the current MPV category to the passenger car category if either Option A or Option B were adopted. To ensure that these vehicles are not immediately subject to passenger car requirements, the standards and regulations would be amended to exempt such vehicles ("constructed either on a truck chassis or with special features for occasional off-road operation") from requirements applicable only to passenger cars at this time.

§ 571.105 [Amended]

3. Standard No. 105 would be amended in one of the two ways set forth below:

Option A.

a. S3 would be revised to read as follows:

S3. Application. This standard applies to passenger cars, special purpose vehicles, vans, trucks, and buses with hydraulic brake systems. However, the requirements specified in S5.1.3.2(b), S5.1.3.3(b), and S5.2.1 of this standard for passenger cars do not apply to a passenger car which is constructed either on a truck chassis or with special features for occasional off-road operation.

b. S5.1 would be amended by revising the first two sentences to read as follows:

S5.1 Service brake systems. Each passenger car and each van, special purpose vehicle, truck, and bus, with a GVWR of 10,000 pounds or less, and

each school bus with a GVWR of greater than 10,000 pounds shall be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each special purpose vehicle, van, truck, and bus (other than a school bus) with a GVWR greater than 10,000 pounds shall meet the requirements of S5.1.2 and 5.1.3 under the conditions specified in S6 when tested according to the procedures and in the sequence set forth in S7. * *

c. The third sentence of S5.1.1.4 would be revised to read as follows:

If the speed attainable in 2 miles is not less than 99 mph, a passenger car that is not constructed on a truck chassis or with special features shall, in addition, be capable of stopping from the applicable speed indicated below, within the corresponding distance specified in Column I of Table II. * *

d. S5.2.3 would be revised to read as follows:

S5.2.3. The parking brake system on a special purpose vehicle, van, truck, or bus (other than a school bus) with a GVWR of 10,000 pounds or less, a passenger car which is constructed either on a truck chassis or with special features for occasional off-road operation, and a school bus with a GVWR greater than 10,000 pounds shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade. * *

Option B.

a. S3 would be revised to read as follows:

S3. *Application.* This standard applies to passenger cars, special purpose vehicles, trucks, and buses with hydraulic brake systems. However, the requirements specified in S5.1.3.2(b), S5.1.3.3(b), and S5.2.1 of this standard for passenger cars do not apply to a passenger car which is constructed either on a truck chassis or with special features off-road operation.

b. S5.1 would be amended by revising the first two sentences to read as follows:

S5.1 *Service brake systems.* Each passenger car and each special purpose vehicle, truck, and bus, with a GVWR of 10,000 pounds or less, and each school bus with a GVWR of greater than 10,000 pounds shall be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6,

when tested according to the procedures and in the sequence set forth in S7. Each special purpose vehicle, truck, and bus (other than a school bus) with a GVWR greater than 10,000 pounds shall meet the requirements of S5.1.2 and 5.1.3 under the conditions specified in S6 when tested according to the procedures and in the sequence set forth in S7. * *

c. The third sentence of S5.1.4 would be revised to read as follows:

If the speed attainable in 2 miles is not less than 99 mph, a passenger car that is not constructed on a truck chassis or with special features shall, in addition, be capable of stopping from the applicable speed indicated below, within the corresponding distance specified in Column I of Table II. * *

d. S5.2.3 would be revised to read as follows:

S5.2.3. The parking brake system on a special purpose vehicle, truck, or bus (other than a school bus) with GVWR of 10,000 pounds or less, a passenger car which is constructed either on a truck chassis or with special features for occasional off-road operation, and a school bus with a GVWR greater than 10,000 pounds shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade. * *

§ 571.208 Standard No. 208; Occupant Crash Protection. [Amended]

4. Standard No. 208 would be amended in one of the two ways set forth below:

Option A.

a. S3 would be revised to read as follows:

S3. *Application.* This standard applies to passenger cars, special purpose vehicles, vans, trucks, and buses. In addition, S9., *Pressure vessels and explosive devices*, applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash. However, the requirements specified for passenger cars in S4.1 and S8.1.1(a) of this standard do not apply to passenger cars constructed either on a truck chassis or with special features for occasional off-road operation.

b. The title of S4.2 would be revised to read as follows:

S4.2 *Trucks, vans, and special purpose vehicles with GVWR of 10,000 pounds or less, and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation.*

c. The title and introductory language of S4.2.1 would be revised to read as follows:

S4.2.1 *Trucks, vans, and special purpose vehicles with GVWR of 10,000 pounds or less, and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation, manufactured on or after January 1, 1976 and before September 1, 1991.* Each truck, van, and special purpose vehicle with a gross vehicle weight rating of 10,000 pounds or less, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, manufactured before September 1, 1991, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2. * *

d. S4.2.2 would be revised to read as follows:

S4.2.2 *Trucks, vans, and special purpose vehicles and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991.* Each truck, van, and special purpose vehicle, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each Type 2 seat belt assembly installed in a front outboard designated seating position in accordance with S4.1.2.3 shall meet the requirements of S4.6.

e. S4.2.3 would be revised to read as follows:

S4.2.3 *Trucks, vans, and special purpose vehicles, and passenger cars constructed either on a truck chassis or with special features for occasional off-*

road operation, manufactured on or after September 1, 1991 with either a GVWR of more than 8,500 pounds but not greater than 10,000 pounds or with an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less. Each truck, van, and special purpose vehicle, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, manufactured on or after September 1, 1991, that has either a gross vehicle weight rating which is greater than 8,500 pounds, but not greater than 10,000 pounds, or has an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

f. The title and the first sentence of the introductory language of S4.3 would be revised to read as follows:

S4.3 Trucks, vans, and special purpose vehicles with GVWR of more than 10,000 pounds. Each truck, van, and special purpose vehicle, with a gross vehicle weight rating of more than 10,000 pounds manufactured on or after January 1, 1972, shall meet the requirements of S4.3.2.

g. The first sentence of S4.6.2 would be revised to read as follows:

S4.6.2 Each truck, van, and special purpose vehicle, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, with a GVWR of 8,500 pounds or less than an unloaded weight of less than 5,500 pounds that is manufactured on or after September 1, 1991, and is equipped with a Type 2 seat belt assembly at a front outboard designated seating position pursuant to S4.1.2.3 shall meet the frontal crash protection requirements of S5.1 at those designated seating positions with a test dummy restrained by a Type 2 seat belt assembly that has been adjusted in accordance with S7.4.2.

Option B.

a. S3 would be revised to read as follows:

S3. Application. This standard applies to passenger cars, special purpose vehicles, trucks, and buses. In addition, S9., *Pressure vessels and explosive*

devices, applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash. However, the requirements specified for passenger cars in S4.1 and S8.1.1(a) of this standard do not apply to passenger cars constructed either on a truck chassis or with special features for occasional off-road operation.

b. The title of S4.2 would be revised to read as follows:

S4.2 Trucks and special purpose vehicles with GVWR of 10,000 pounds or less, and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation.

c. The title and introductory language of S4.2.1 would be revised to read as follows:

S4.2.1 Trucks and special purpose vehicles with a GVWR of 10,000 pounds or less, and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation, manufactured on or after January 1, 1976 and before September 1, 1991. Each truck and special purpose vehicle with a gross vehicle weight rating of 10,000 pounds or less, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, manufactured before September 1, 1991, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that forward control vehicles manufactured prior to September 1, 1981, convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

d. S4.2.2 would be revised to read as follows:

S4.2.2 Trucks and special purpose vehicles, and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation, with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after September 1, 1991. Each truck and special purpose vehicle, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured on or after

September 1, 1991, shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2. Each Type 2 seat belt assembly installed in a front outboard designated seating position in accordance with S4.1.2.3 shall meet the requirement of S4.6.

e. S4.2.3 would be revised to read as follows:

S4.2.3 Trucks and special purpose vehicles, and passenger cars constructed either on a truck chassis or with special features for occasional off-road operation, manufactured on or after September 1, 1991 with either a GVWR of more than 8,500 pounds but not greater than 10,000 pounds or with an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less. Each truck and special purpose vehicle, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, manufactured on or after September 1, 1991, that has either a gross vehicle weight rating which is greater than 8,500 pounds, but not greater than 10,000 pounds, or has an unloaded vehicle weight greater than 5,500 pounds and a GVWR of 10,000 pounds or less shall meet the requirements of S4.1.2.1, or at the option of the manufacturer, S4.1.2.2 or S4.1.2.3 (as specified for passenger cars), except that convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers may instead meet the requirements of S4.2.1.1 or S4.2.1.2.

f. The title and the first sentence of the introductory language of S4.3 would be revised to read as follows:

S4.3 Trucks and special purpose vehicles with GVWR of more than 10,000 pounds. Each truck and special purpose vehicle, with a gross vehicle weight rating of more than 10,000 pounds manufactured on or after January 1, 1972, shall meet the requirements of S4.3.1 or S4.3.2.

g. The first sentence of S4.6.2 would be revised to read as follows:

S4.6.2 Each truck and special purpose vehicle, and each passenger car constructed either on a truck chassis or with special features for occasional off-road operation, with a

GVWR of 8,500 pounds or less and an unloaded weight of less than 5,500 pounds that is manufactured on or after September 1, 1991, and is equipped with a Type 2 seat belt assembly at a front outboard designated seating position pursuant to S4.1.2.3 shall meet the frontal crash protection requirements of S5.1 at those designated seating positions with a test dummy restrained by a Type 2 seat belt assembly that has been adjusted in accordance with S7.4.2.

Issued on October 12, 1988.

Barry Felrice,

Associate Administrator for Rulemaking,

[FR Doc. 23922 Filed 10-13-88; 9:41 am]

BILLING CODE 4910-S9-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition To List the Marbled Murrelet in Washington, Oregon, and California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The U.S. Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. Substantial information has been presented that a petition to list the marbled murrelet in Washington, Oregon, and California may be warranted. Formal review of the status of the marbled murrelet is initiated herewith.

DATE: The finding announced in this notice was made in August 1988. Comments and information may be submitted until December 1, 1988.

ADDRESSES: Information, comments, or questions may be submitted to the Supervisor, Fish and Wildlife Enhancement Field Station, 727 N.E.

24th Avenue, Portland, Oregon 97232. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT:

Mr. Russell D. Peterson, at the above address (telephone 503/231-6179 or FTS 429-6179).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The National Audubon Society (Dr. J.P. Myers, Senior Vice President) submitted a petition to list the marbled murrelet (*Brachyramphus marmoratus*) as a threatened species in the States of Washington, Oregon, and California. The petition, dated January 12, 1988, was received by the Service on January 15, 1988.

The petition identified the present or threatened destruction, modification, or curtailment of the subspecies habitat or range, and the inadequacy of existing regulatory mechanisms as the primary factors for the petition. The status review that accompanied the petition cited habitat loss of old-growth and mature forests as the principal factor affecting the continued existence of the subspecies over the southern portion of its North American range.

Considerable habitat reduction has occurred in the three-State area under

petition and anecdotal information exists that may indicate a corresponding reduction in the local portion of the murrelet population. Questions pertaining to the significance and relationship of this portion of the murrelet population with the larger and more secure portion in the northern part of its range remain to be answered. Nonetheless, the Service found that the petition presented substantial information indicating that the requested action may be warranted.

Review of the status of *Brachyramphus marmoratus* is initiated with publication of this notice. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any interested party concerning the marbled murrelet.

Author

This notice was prepared by Ms. Jackie Campbell, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6150 or FTS 429-6150).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 99-625, 100 Stat. 3500 (1986)), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 7, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-23917 Filed 10-14-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Projects in the State of New Jersey; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA projects in New Jersey.

ACTION Region 2 announces the availability of funds for fiscal year 1989 for a new VISTA program grant authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113) in the State of New Jersey. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: Stanley Gorland, ACTION State Director, 402 East State Street, Room 422, Trenton, New Jersey 08608, (609) 989-2243.

Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to

carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Region 2 will be awarding a grant for the placement of VISTA Volunteers in New Jersey in the following emphasis areas:

1. Unemployment

Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. Homelessness

Development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counselling programs for at risk youth; and job-training services for shelter residents.

3. Drug and Alcohol Abuse

Prevention and education program directed primarily at low-income youth; and development of low-income parent support groups.

4. Economic Development

Appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope of Grant

The grant will support 10 VISTA Volunteers for one year of service. The amount of the grant includes the monthly subsistence and readjustment

allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by the total number of the VISTA Volunteers (10), cannot exceed \$8,000.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, a 50%, non-Federal match of the supervisory's salary and fringe benefits is mandatory. The supervisor of the VISTA project must serve on at least a half-time basis.

Publication of this announcement does not obligate ACTION to award a grant or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria For Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of a new VISTA program grant. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their tasks.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

- (a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

- (b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

- (c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

- (d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers.

- (a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

- (b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

- (c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

- (d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

- (a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

- (b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

- (c) Labor and anti-labor organization and related activities.

- (d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region 2 will review and evaluate all eligible applications prior to submission to the Director of VISTA and Student Community Service Programs. ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to Stanley Gorland, ACTION State Director, 402 East State Street, Room 422, Trenton, New Jersey 08608. The deadline for receipt of applications is 5:00 p.m. local time November 30, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

- a. VISTA Project Application (Form A-1421) and the VISTA Application for Federal Assistance (Form A-1421 B) with a detailed budget justification.

- b. CPA certification of accounting capability.

- c. Copy of recent Articles of Incorporation.

- d. Proof of non-profit status or an application for non-profit status, and related documentation.

- e. Current resume of potential VISTA Supervisor, if available, or the current resume of the director of the applicant agency or project.

- f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

- g. A list of the Board of Director members which includes their professional affiliations.

Signed at Washington, DC, this 11th day of October 1988.

Donna M. Alvarado,
Director.

[FR Doc. 88-23849 Filed 10-14-88; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service**

(No. LS-88-104)

Plant Variety Protection Advisory Board; Open Meeting**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice of meeting.**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.**DATE AND TIME:** Tuesday, November 15, 1988, 8:30 a.m. to 4:00 p.m., open to the public.**ADDRESS:** The meeting will be held in Conference Room 1400, National Agricultural Library Building, 10301 Baltimore Blvd., Beltsville, Maryland.**FOR FURTHER INFORMATION CONTACT:**

Dr. Kenneth H. Evans, Executive Secretary, Plant Variety Protection Advisory Board, Room 500, National Agricultural Library Building, Beltsville, Maryland 20705 (301-344-2518).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (Pub. L. No. 92-463), this notice is given concerning a Plant Variety Protection Advisory Board meeting. The agenda for the meeting will include discussion of: (1) The minimum difference accepted for novelty between varieties, (2) Proposed changes in the Regulations, and (3) Other related topics.

The meeting is open to the public. Persons, other than members, who wish to address the Board at the meeting should contact Dr. Kenneth Evans at the above address and telephone number, prior to the meeting. Written statements may be submitted to the Board prior to, at, or after the meeting.

Done at Washington, DC, on October 12, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-23901 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

(Docket No. 88-146)

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Notice.**SUMMARY:** This document advises the public that one permit application for release into the environment of a genetically engineered organism is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with the regulations in 7 CFR Part 340 which regulate the introduction of certain genetically engineered organisms and products**FOR FURTHER INFORMATION CONTACT:**

Mary Petrie, Document Control Officer, biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room G-185, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit prior to introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products which are deemed "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining limited permits for the importation or interstate movement of a regulated article. Pursuant to these regulations, APHIS has received the following permit application for release into the environment, which is being reviewed by the Agency:

Accession No.	Date Received	Organism	Field Test Location
88-236-01	8-23-88.....	Genetically engineered tomato to suppress expression of the enzyme, polygalacturonase.	Hawaii.

Done at Washington, DC, this 11th day of October 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-23920 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service**Feed Grain Donations for the Fort Berthold Reservation Indian Tribes in North Dakota**

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Berthold Indian Tribes of the Fort Berthold Reservation in North Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Three Affiliated Tribes (the "Tribes") of the Fort Berthold Indian Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribes to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon November 1, 1988, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on October 7, 1988.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-23862 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-05-M

Feed Grain Donations for the Standing Rock Sioux Tribe in South Dakota and North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Standing Rock Sioux Tribe in North Dakota and

South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Standing Rock Sioux Reservation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interface with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the Tribes utilizing such lands. These donations by the CCC may commence upon November 1, 1988, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on October 7, 1988.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-23861 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Comparison of Aflatoxin Analytical Techniques

Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), the Federal Grain Inspection Service (FGIS) provides aflatoxin testing of corn. Aflatoxin is a chemical substance resulting from the metabolic process of certain molds in grains and other foodstuffs. This notice is to announce that FGIS will be conducting a comparison study of aflatoxin test methodologies. The object of this study is to evaluate tests that could potentially be used to replace the black light and the Holaday-Velasco minicolumn tests currently in use for determining the presence of aflatoxin in corn.

Any manufacturers, representatives, or distributors wishing to have their product(s) tested should contact Dr. Donald E. Koeltzow, Chief of the Research and Development Branch or Mr. John Halverson, Deputy Director of the Quality Assurance and Research Division, USDA-FGIS Technical Center,

P.O. Box 20285, Kansas City, MO 64195 (Telephone 816-891-7150) before the close of business on Monday, November 7, 1988. Further information regarding the study may be obtained from Dr. Koeltzow.

Dated: October 12, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-23915 Filed 10-14-88; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Plant and Equipment Expenditures Surveys.

Form Number: BE-452/456.

Type of Request: New.

Burden: 34,300 hours.

Average Hours per Response: 53 minutes (average).

Total Annual Responses: 39,000.

Needs and Uses: These surveys provide information on capital expenditures and investment plans for U.S. nonfarm business. The estimates obtained are the only official estimates of investments plans and quarterly investment by industry and are widely recognized as one of the most important economic indicators.

Affected Public: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Frequency: Quarterly and Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1988.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88-23850 Filed 10-14-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 32-88; Foreign-Trade Zone 15—Kansas City, MO]

Application for Subzone Mobay Corp., Kansas City, MO; Agricultural and Specialty Chemical Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc. (KCFTZ), grantee of FTZ 15, requesting special-purpose subzone status for the agricultural and specialty chemical manufacturing plant of Mobay Corporation, Agricultural Chemicals Division (Mobay), a subsidiary of Bayer USA, Inc., and Bayer AG of West Germany, located in Kansas City, Missouri, within the Kansas City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 4, 1988.

The Mobay complex (112 acres with 750,000 sq. ft. of space among 59 buildings) is located at 8400 Hawthorn Road in Kansas City. The facility employs 1,300 persons and is used to produce agricultural and specialty chemicals for the control of insects, weeds and plant diseases. Approximately 10 percent of the raw materials the company uses are currently sourced abroad, such as cyanuric chloride, benzenethiol, aninoic, nitrobenzene compounds and halogenated, sulfonated, nitrated derivatives of aldehydes.

Zone procedures would exempt Mobay from duty payments on the foreign components used in its exports. On its domestic sales, the company would be able to elect the duty rate that applies to insecticides and nitrobenzene compounds. The duty rates on the major components range from 3.5 to 20 percent, whereas the rates for the finished products are 7.9 and 12.5 percent. The application indicates that zone savings will improve the plant's international competitiveness.

In accordance with the Board's regulations, the examiners committee has been appointed to investigate the application and report to the Board. The committee consist of: Dennis Pucinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsyth Boulevard, Suite 625, Clayton, Missouri 63105; and Colonel

John Atkinson, District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building 601 E. 12th Street, Kansas City, Missouri 64106-2896.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 28, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 635, 601 East 12th Street, Kansas City, Missouri 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: October 7, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-23924 Filed 10-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 31-88; Foreign-Trade Zone 12, McAllen, TX]

Application for Expansion of Zone; McAllen Economic Development Corp.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the McAllen Economic Development Corporation (MEDC), successor by change of name to McAllen Trade Zone, Inc., grantee of Foreign-Trade Zone 12, requesting authority to expand the zone to include an additional site at the McAllen-Miller International Airport, McAllen, Texas, within the Hidalgo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 30, 1988.

The McAllen zone was approved on October 30, 1970 (Board Order 84, 35 FR 16962, 11-3-70), and expanded on May 2, 1984 (Board Order 254, 49 FR 22842, 6-1-84). The zone presently covers 80 acres within the McAllen Southwest Industrial Area, McAllen. The grantee has requested authority to expand the zone to include an 8.5-acre parcel at the Air Cargo Facility within the airport complex. The 8.5-acre city-owned parcel is situated south of Uvalde Street and east of FM 1926 about three miles north of the existing zone. The expansion is being requested to make zone warehouse space available at the airport

to facilitate international air cargo shipments.

No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, TX 77057-3012; and Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553-1229.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 22, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Administration Building, International Bridge, Hidalgo, TX 78557

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW, Room 1529, Washington, DC 20230

Dated: October 3, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-23925 Filed 10-14-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius; Correction

October 12, 1988.

In the table in the letter to the Commissioner of Customs published on September 30, 1987 (page 36605, second column), add TSUSA number 384.2306 to the TSUSA's for shirts made from fabric

with two or more colors in the warp and/or the filling in Category 640.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-23788 Filed 10-14-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DO-Rating for Production Equipment; DD Form 691; and OMB Control Number 0704-0055.

Type of request: Reinstatement.

Average burden hours/minutes per response: 3 hours.

Frequency of response: On occasion.

Number of respondents: 655.

Annual burden hours: 1,965.

Annual responses: 655.

Needs and uses: This form is required to fulfill certain parts of the Title I Act of 1950, as amended. The President is authorized to require that contracts or orders relating to certain approved defense or energy programs be accepted and performed on a preferential basis over all other contracts or orders. To help facilitate this, DoD has established a system for contractors with rated orders to receive priority for production equipment. To accomplish this the DD Form 691 has been developed.

Affected public: Businesses or other for profit.

Respondents obligation: Required to obtain or retain a benefit.

OMB desk officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD clearance officer: Ms. Pearl Rascoe-Harrison

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204,

Arlington, Virginia 22202-4302,
telephone (202)746-0933.

October 11, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 88-23875 Filed 10-14-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements, Part 10, Specifications, Standards, and Other Purchase Descriptions, Related Clauses in Part 52.210; DD Forms 346 and 347; OMB Control Number 0704-0230.

Type of Request: Extension.
Average Burden Hours/Minutes per Response: 3 hours.

Frequency of Response: On occasion.
Number of Respondents: 300.
Annual Burden Hours: 900.
Annual Responses: 300.

Needs and Uses: The information collection requirements related to specifications, standards, and drawings excluding brand name or equal information and bills of materials.

Affected Public: Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.

Respondent's Obligation: Mandatory.
OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

October 11, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 88-23876 Filed 10-14-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Office of the Secretary; DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: November 17, 1988, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

October 11, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 88-23877 Filed 10-14-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Noncompetitive Financial Assistance Award Renewal With Pacific Gas and Electric Company

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award renewal.

SUMMARY: The Department of Energy (DOE), Albuquerque Operations Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plans for the renewal of a cooperative agreement to Pacific Gas and Electric Company (PG&E), Research and Development Department, San Ramon, California, on a noncompetitive basis. This agreement supports the continuation of the Photovoltaics for Utility Scale Applications (PVUSA) Project, the objective of which is to bridge the gap between current photovoltaics (PV) research and development activities and the readiness of systems for broad utility application and to focus on the transfer

of PV technology to U.S. utilities for commercial application.

The DOE has determined that restriction to PG&E is appropriate based on the following information.

- The PVUSA Project is presently being funded by DOE as a result of an unsolicited application submitted by PG&E in 1987. Competition for support would have a significant adverse effect on continuity and completion of the activity. PG&E has solicited the participation and interest of other utilities companies and other interested parties and has laid the groundwork for the Project.

- The activities are being conducted by PG&E using its own resources and those provided by third parties. PG&E will cost share at least 50 percent for the Project.

The total estimated project cost for the proposed second year of this cooperative agreement is \$9,897,869, of which the anticipated project cost to the Government is \$3,500,000. The distribution and availability of funds is subject to budget limitations, adequate competition and satisfactory proposals from potential subcontractors, and results of research under the cooperative agreement, and may deviate from the projection.

FOR FURTHER INFORMATION CONTACT: Susan L. Connor, U.S. Department of Energy, Albuquerque Operations Office, Contracts and Industrial Relations Division, P.O. Box 5400, Albuquerque, NM 87115, Telephone: (505) 846-4345 or FTS 846-4345.

Issued in Albuquerque, NM, September 30, 1988.

Charles E. Trobell,

Assistance Manager for Management and Administration.

[FR Doc. 88-23912 Filed 10-14-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order to Oasis Petroleum Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed remedial order to Oasis Petroleum Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), Department of Energy (DOE), hereby gives notice of a Proposed Remedial Order (PRO) issued to Oasis Petroleum Corporation (Oasis), Post Office Box 3216, Culver City, California 90230, on September 16, 1988.

Oasis was a reseller of motor gasoline and is now in bankruptcy before the U.S. Bankruptcy Court for the Central District of California, No. LA 86-01225-BR (Petition for Relief filed January 23, 1986). The PRO alleges that during the period from March 1, 1979 through January 27, 1981, Oasis diverted gasoline allocated to its retail gasoline stations and sold that gasoline to firms without an allocation right to gasoline from Oasis. ERA calculates the amount of the violation is \$10,139,702.17 plus interest.

ERA has found that Oasis purchased 84 retail gasoline stations from Research Fuels, Inc., in October 1978. Subsequently, Oasis purchased from Cities Service Company gasoline attributable to the allocation entitlements of these stations and sold that gasoline to Apex Oil Company and certain other customers who had no supplier/purchaser relationship with Oasis. ERA has determined that these transactions violated the allocation regulations practices rule, and resulted in a circumvention of the regulations in violation of 10 CFR 205.202.

As an initial matter, ERA has determined that Oasis' purchase of gasoline attributable to its retail gasoline stations and the company's subsequent resale of that gasoline to purchasers without an allocation right to that gasoline resulted in a diversion of the gasoline in violation of the allocation regulations. ERA determined that these violations and the surrounding transactions demonstrate a course of conduct which circumvented and contravened the regulations in violation of 10 CFR 205.202.

Furthermore, ERA determined that Oasis violated 10 CFR 211.9(a) when it sold gasoline to purchasers without an allocation entitlement to that gasoline.

ERA also contends in the PRO that Oasis violated 10 CFR 210.62(b) by engaging in a discriminatory practice when it sold gasoline to purchasers without an entitlement to an allocation while Oasis failed to supply the retail stations with their allocations of gasoline.

In addition, ERA determined that Oasis failed to establish an ongoing business at certain of the retail stations. Oasis failed to open these stations after purchasing them, or supplied them with no gasoline or negligible amounts of gasoline for extended periods of time. As a result, ERA determined that Oasis lost the entitlement to allocations for these stations and violated 10 CFR 211.106(f) and 211.11(a) when it purchased gasoline attributable to these stations.

Further, ERA determined that Oasis filed certifications that certain of its

stations had experienced unusual growth and were therefore entitled to increased allocations pursuant to 10 CFR 211.104. However, Oasis failed to certify its allocation use downward, as required by 10 CFR 211.13(f), when these stations were not supplied with their full allocations of gasoline.

To remedy these violations, the PRO directs Oasis to disgorge the profits from these transactions, plus interest, in restitution, and remit that amount to the DOE for disposition according to the applicable law. The violation amount plus interest computed through January 22, 1986, the day before Oasis filed its Petition for Relief in the bankruptcy court, is \$23,567,721.88.

A copy of the Proposed Remedial Order may be obtained from the DOE Freedom of Information Room, U.S. Department of Energy, 1000 Independence Avenue, SW, Room 1E-019, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with DOE's Office of Hearings and Appeals, U.S. Department of Energy, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. A person who fails to file a Notice of Objections shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with 10 CFR 205.193, the PRO may be issued as a final Remedial Order.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant shall be served on the same day as filed, on Diana D. Clark, Director of Administrative Litigation, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW, RG-32, Room 3H-017, Washington, DC 20585.

Issued in Washington, DC, this 7th day of October 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation,
Economic Regulatory Administration.

[FR Doc. 88-23913 Filed 10-14-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-14, 182, 782A/B/C, 821, 856, and 863.

3. 1905-0174.

4. Petroleum Marketing Program.

5. Revision—The purpose of this request is to revise the following three forms used in this program: EIA-782A, "Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report," EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report," and EIA-782C, "Monthly Report of Petroleum Products Sold Into States for Consumption." They will be revised to add one additional product category, "Finished Unleaded Midgrade Motor Gasoline," to the list of products for which sales and consumption data are collected. (No changes are being proposed to the other forms in this program nor is any request being proposed at this time to extend any of these forms beyond the currently approved date of September 30, 1990.)

6. Monthly, Annually, and Triennially.

7. Mandatory.

8. Businesses or other for profit.

9. 19,695 respondents annually.

10. 53,718 responses annually.

11. The estimated average hours per response for the forms in the Petroleum Marketing Program are: EIA-14, 2.370 hours; EIA-182, 4 hours; EIA-782A, 14.4 hours; EIA-782B, 2.31 hours; EIA-782C, 4.0 hours; EIA-821, 3.1 hours; EIA-856, 6.29 hours; and EIA-863, 1 hour.

12. This revision will add 4,500 hours of annual burden to the currently approved total of 147,059 hours for this program. See item 5 above.

13. The Petroleum Marketing Program surveys collect information on costs, sales, prices and distribution for crude oil and petroleum products. Data are published in the petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, and distributors and importers.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, October 12, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-23914 Filed 10-14-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER88-630-000 et al.]

New England Power Co. et al.; Electric Rate Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER88-630-00]

October 7, 1988.

Take notice that on September 30, 1988, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Original Volume No. 1, Primary Sales for Resale, constituting a new rate referred to as the W-10 rate. NEP states that the proposed rate would increase rates from its currently effective rates by approximately \$96.5 million. NEP requests that the rate be made effective December 1, 1988, but be suspended for one month, to permit billing commencing on January 1, 1989.

According to NEP, the proposed rate increase relates principally to the cost of measures necessary to meet NEP's capacity and energy requirements in 1989. NEP states that increased expenditures on conservation and load management programs and purchases of additional capacity account for \$87.8 million of the proposed increase.

NEP has proposed the W-10 rate under two alternative rate designs. NEP requests that Rate W-10M, which is a marginal cost, time-of-use rate, be made effective on January 1, 1989, with the condition that any refunds ordered in the proceeding be based upon the W-10M rate design. If this condition is not acceptable to the Commission, NEP request that its alternative traditionally designed rate (W-10) be made effective on that date instead.

Comment date: October 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Power Company

[Docket No. ER82-553-003, ER82-554-003]

October 7, 1988.

Take notice that on October 3, 1988, Ohio Power Company (OPCo) tendered for filing a Supplemental Compliance Filing pursuant to Opinion Nos. 272 and 272-A of the Commission issued April 30, 1987 and April 7, 1988, respectively, in Docket Nos. ER82-553-002/3 and ER82-554-002/3.

Copies of the supplemental filing were served upon Wheeling Power Company, the Public Service Commission of West Virginia, the affected municipal

customers and the Public Utilities Commission of Ohio.

Comment date: October 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Cambridge Light Company

[Docket No. ER87-263-001]

October 7, 1988.

Take notice that on September 29, 1988, Cambridge Electric Light Company (Cambridge) tendered for filing its compliance refund report pursuant to the Commission's order issued September 15, 1987.

Copies of the tendered filing have been served by Cambridge upon the Commission's Staff, the Town of Belmont and the Massachusetts Department of Public Utilities.

Comment date: October 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER88-628-000]

October 7, 1988.

Take notice that on September 30, 1988, Kansas Power and Light Company (KPL) tendered for filing proposed changes in its Federal Energy Regulatory Commission Electric Service Tariff FERC No. 83.

Supplement 2, dated September 2, 1988, provides for establishment of an additional point of interconnection known as the Spring Hill Interconnection between KPL and Kansas City Power & Light Company (KCPL) and provides for the utilization by one party of the other party's distribution facilities from time to time. Copies of the filing have been mailed to KCPL and the State Corporation Commission of Kansas.

Comment date: October 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Washington Water Power Company

[Docket No. ER89-2-000]

October 7, 1988.

Take notice that on October 3, 1988, Washington Water Power Company (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as an Energy Exchange Agreement between Washington and the Public Utility District No. 1 of Snohomish County (Snohomish). Washington states that the energy will be made available to Snohomish by Washington and returned to Washington for each period, October 1 through April 30. The agreement is made under section 9 (j)(2) of the Pacific Northwest Coordination Agreement

(FERC Rate Schedule No. 97). All accounts shall be closed at the end of each period in accordance with contractual procedures.

Washington requests that the requirements of prior notice be waived and the effective date be made retroactive to the execution date, September 6, 1988.

Comment date: October 24, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER89-3-000]

October 7, 1988.

Take notice that on October 4, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Sales and Transmission Letter Agreement (Letter Agreement) among PNM, Arkansas River Power Authority (ARPA) and Raton Public Service Company (Raton). The Letter Agreement provides for the sale of supplement power and energy by PNM to ARPA from November 1, 1988 through March 31, 1990, and modifies certain provisions of the PNM-Raton Transmission Service Agreement dated November 16, 1982. Between November 1, 1988 and March 31, 1989 PNM will reserve a minimum of 23 MW-months of Supplemental Resource capacity for ARPA to be used exclusively for serving the retail loads of Raton. The Letter Agreement also increases the rates Raton pays PNM for firm and interruptible transmission services and reduces the minimum required usage of the firm transmission service.

PNM has requested waiver of the Commission's notice requirements so that the Letter Agreement may become effective as of November 1, 1989.

Copies of the filing have been served upon ARPA and Raton and the New Mexico Public Service Commission.

Comment date: October 24, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Ocean State Power

[Docket No. ER88-627-000]

October 11, 1988.

Take notice that on September 29, 1988, Ocean State Power (Ocean State) tendered for filing the following amendments to its rate schedules with the Federal Energy Regulatory Commission:

Supplements No. 7 and 8 to Rate Schedule FERC No. 1

Supplements No. 4 and 5 to Rate Schedule FERC No. 2

Supplement No. 4 to Rate Schedule FERC No. 3

Supplements No. 4 and 5 to Rate Schedule FERC No. 4

The supplements are amendments (Amendments) to the unit power agreements between Ocean State and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation. The Amendments are necessitated by (1) changes required by FERC in its order approving the rates set forth in the Agreements; (2) changes deriving from modifications in the project since the filing of the Agreement with FERC; (3) changes related to the development of the Second Unit; and (4) changes that clarify potentially ambiguous provisions in the Agreements. The Amendments do not constitute a rate increase.

Ocean State has requested a waiver of the Commission's original cost accounting rules with respect to its Site acquisition. Additionally, Ocean State has requested a waiver of the 120-day maximum notice set forth in the Commission's regulations and that the amended rate schedules be permitted to become effective upon commencement of the test phase of the facility.

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: October 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Citizens Utilities Company, Franklin Electric Light Company, Green Mountain Power Corporation, Canal Electric Company and Boston Edison Company

[Docket No. EC89-1-000]

October 11, 1988.

Take notice that on October 3, 1988, Citizens Utilities Company (Citizens), Franklin Electric Company (Franklin), Green Mountain Power Corporation (Green Mountain), Canal Electric Company (Canal Electric), and Boston Edison Company, (Boston Edison) tendered for filing a joint application with the Federal Energy Regulatory Commission seeking authority to acquire the common stock of New England Hydro-Transmission Company, Inc. (New England Hydro) and New England Hydro-Transmission Electric Corporation (New Hampshire Hydro).

Citizens is incorporated under the laws of the State of Delaware and is qualified as a foreign corporation in the States of Arizona, Colorado, Hawaii,

Idaho, and Vermont. Citizens engages primarily in the operation of telephone, water and wastewater systems in the State of Arizona; the generation or purchase, transmission, distribution and sale of electric energy in the States of Arizona, Idaho and Vermont; and the purchase, sale and distribution of natural gas in the States of Arizona and Colorado. Franklin is incorporated under the laws of the State of Vermont with its principal business office at Franklin, Vermont and is engaged in the purchase, production, transmission, distribution and sale of electric energy in three towns in Vermont. Green Mountain is incorporated under the laws of the State of Vermont, with its principal business office at South Burlington, Vermont, and is engaged in the purchase, production, transmission, distribution and sale of electric energy primarily in the northern portion of Vermont. Green Mountain is qualified as a foreign corporation in the States of Maine and Massachusetts. Boston Edison is incorporated under the laws of the Commonwealth of Massachusetts, is qualified to carry on its business as a foreign corporation in the State of Maine, and is engaged in the purchase, production, transmission and sale of electric energy primarily in the City of Boston and surrounding towns and cities. Canal Electric is incorporated under the General Laws of Massachusetts with its principal office in Cambridge, Massachusetts, and is engaged in the generation and wholesale sale of electricity.

New England Hydro is incorporated under the laws of the Commonwealth of Massachusetts, with its principal place of business at Westborough, Massachusetts. New Hampshire Hydro is incorporated under the laws of the State of New Hampshire, with its principal place of business at Concord, New Hampshire. Both New England Hydro and New Hampshire Hydro were formed as wholly-owned subsidiaries of New England Electric System to undertake the responsibility for the development of the Massachusetts and New Hampshire portions of the Phase II facilities of the Quebec-New England HVDC Interconnection. Development of Phase II facilities is necessary to (i) meet New England's growing demand for electric power, (ii) provide the facilities for interconnected operations between Hydro-Quebec and NEPOOL, and (iii) allow economic energy interchanges between NEPOOL and Hydro-Quebec.

Comment date: October 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service

[Docket No. ER88-629-000]

October 11, 1988.

Take notice that on September 30, 1988, Central Vermont Public Service Corporation (Central Vermont or Company) tendered for filing a tariff for the supply of system power. The proposed tariff provides for service to four customers who are receiving service under contracts which terminate on October 31, 1988. The affected customers and the rate schedule designations of the existing contracts are:

Customer	Rate schedule No.
Lyndonville Electric Department	92
Village of Johnson Water and Light Department	106
Village of Hyde Park Water and Light Department	111
Village of Ludlow Electric Light Department	96

The tariff will be effective from November 1, 1988 through October 31, 1993, and may be extended by either party for one fifteen year period, in which case the termination date would be October 31, 2008. The Company has also filed a notice of termination of system power service to the Vermont Electric Generation and Transmission Cooperative, Inc. whose contract expires on October 31, 1988.

The Company states that under the tariff the annual capacity charge will be based on current costs instead of on costs recorded in prior years as is the case under the existing contracts. In addition, customers have specified the amount of power to be taken in the first five years the contract is in effect and, if the contract is extended, may increase or decrease the amount of power taken thereafter, subject to limitations states in the tariff. The Company also states that recovery of its loss on the sale of its share of Seabrook I will be deferred during the first five years and two months the contract is in effect and will be recovered through levelized payments over the last fourteen years and ten months with payments equal to the present value of a ten-year recovery without rate base treatment.

Central Vermont states that a copy of the filing has been mailed to each of the affected customers and to the Vermont Public Service Board.

Comment date: October 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Exchange, Inc.

[Docket No. ER89-4-000]

October 11, 1988.

Take notice that on October 4, 1988, Portland General Exchange, Inc. (PGX) tendered for filing a new service schedule for sales of nonfirm energy.

PGX is the wholesale electric power marketing subsidiary of Portland General Corporation. PGX was organized this year for the purpose of acquiring power from various wholesale suppliers. From this inventory of wholesale power, PGX will market firm system power on a long-term basis to various nonaffiliated utilities.

Recently, PGX concluded its first wholesale power acquisitions from Bonneville Power Administration (BPA). A portion of the power acquired from BPA remains uncommitted, and will be available from time to time for nonfirm energy transactions.

Service Schedule PGX-1 will be used as PGX's tariff for nonfirm energy transactions. The cost of energy sold is simply the amount specified in the recently executed BPA power sales contracts. PGX overhead costs over-and-above the BPA sale price would be recovered through a two mill/kilowatt hour mark-up, imposed whenever conditions allow in the highly competitive nonfirm energy market. Alternatively, the PGX-1 schedule provides for share-the-savings pricing.

PGX requests an effective date of September 16, 1988, and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing were served upon the Oregon Public Utility Commission and utilities likely to purchase nonfirm energy from PGX.

Comment date: October 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER89-1-000]

October 11, 1988.

Take notice that on October 3, 1988, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission changes in its FERC Order No. 84 Rate Schedule for third-party purchase and resale transactions.

WP&L's FERC Order No. 84 Rate Schedule, as revised provides that where WP&L voluntarily engages in third-party purchase and resale of electric power or energy, WP&L, for each megawatt of energy transmitted in such transaction that is priced according to the purchased energy price from

third-party system, will charge the receiving party:

- The amount WP&L pays the supplying party; plus
- Up to 5.40 dollars per megawatt-hour for energy transmitted (in no event shall the one day total of such hourly charges for any single transaction exceed the product of \$86.40 time the highest average number of megawatts resold in any hour during the day); plus
- Up to 1.00 dollar per megawatt-hour for difficult to quantify costs; plus
- The cost of transmission losses, taxes, and any other expenses incurred by WP&L that would not have been incurred if the resale of power by WP&L has not occurred.

WP&L requests expedited consideration of this filing and an effective date coincident with the Commission's order accepting the rate change for filing. Accordingly, WP&L requests waiver of the Commission's notice requirements, to the extent necessary.

WP&L states that copies of this filing have been mailed to each of the Parties identified on the Service List.

Comment date: October 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23904 Filed 10-14-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES89-1-000]

Oklahoma Gas & Electric Co.; Application

October 11, 1988.

Take notice that on October, 1988, Oklahoma Gas and Electric Company

filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Power Act, to issue more than \$250,000,000 of short-term debt on or before December 31, 1990, with a final maturity no later than December 31, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 4, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23903 Filed 10-14-88; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3463-1]

Municipal Settlement Discussion Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is developing a Municipal Settlement Policy to address issues related to notifying and bringing municipalities that are responsible parties into the Superfund settlement process. In order to provide a public forum for interested parties to provide input into how municipalities should fit in the settlement process, the Agency has formed a Municipal Settlement Discussion Group. The discussion group is not designed to promote consensus on the Municipal Settlement Policy, nor to advise the Agency on policy directions. The group consists of 24 members representing EPA, States, local governments, industry, business, and environmental concerns. The group's second meeting was held on August 4, 1988 in Washington, DC. Copies of the minutes from that meeting are available upon request.

FOR FURTHER INFORMATION CONTACT: Mary Kay Voytilla of the Environmental Protection Agency, Office of Waste Programs Enforcement (WH-527), Washington, DC 20460; telephone 202/475-8367.

Robert Mason,

Acting Chief, Guidance and Oversight Branch, CERCLA Enforcement Division.

[FR Doc. 88-23899 Filed 10-14-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3463-2]

Municipal Discussion Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Municipal Settlement Discussion Group will meet in Washington, DC, on October 20, 1988. The Environmental Protection Agency formed the group in order to provide a public forum for interested parties to provide input on how municipalities should fit into the Superfund settlement process. The group consists of members representing EPA, States, local governments, industry and environmental concerns. The Agency is currently developing a Municipal Settlement Policy to address issues related to notifying and bringing municipalities that are responsible parties into the Superfund settlement process.

FOR FURTHER INFORMATION CONTACT: Mary Kay Voytilla of the Environmental Protection Agency, Office of Waste Programs Enforcement (WH-527), Washington, DC 20460; telephone 202/475-8367.

Robert Mason,

Acting Chief, Guidance and Oversight Branch, CERCLA Enforcement Division.

[FR Doc. 88-23898 Filed 10-14-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3463-4]

Proposed Settlement of Administrative Order by Consent; Summit National Site, Ohio

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed Settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under Section 107 of CERCLA for response costs incurred during removal activities at the Summit National Site in Deerfield, Ohio. The Respondents have tentatively agreed to reimburse U.S. EPA in the amount of \$227,565 for these activities. This action

is being taken in response to a CERCLA Section 106(a) Unilateral Administrative Order issued by U.S. EPA to the Respondents on March 30, 1987.

U.S. EPA today is proposing to approve this settlement offer because it reimburses U.S. EPA for incurred costs relating to the Section 106(a) Unilateral Administrative Order which the Settling Parties did not perform, and brings the Settling Parties into compliance with said order.

DATE: Comments on this proposed settlement must be received by November 16, 1988.

ADDRESSES: Copies of the proposed settlement are available at the following addresses for review: (It is recommended that you telephone Jennifer Hall at (312) 886-4359, before visiting the Region V office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible).

Jennifer Hall, Community Relations Coordinator, Office of Public Affairs, 5PA-14, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4359.

FOR FURTHER INFORMATION CONTACT: Jennifer Hall, Office of Public Affairs, at (312) 886-4359.

SUPPLEMENTARY INFORMATION: The Summit National site is on the National Priorities List and operated as a liquid incinerator from 1974 to 1978, before being closed by the Ohio Environmental Protection Agency (OEPA). During this period, various industrial wastes were improperly disposed of at the site. Preliminary investigations at the site have revealed, inter alia, elevated concentrations of organic hazardous substances in soil, surface water, groundwater and sediment samples.

The Respondents are the generators and transporters of the hazardous substances sent to the site. The actions which were taken by U.S. EPA, in lieu of the Respondents, mitigated the possibility of a pond containing hazardous substances from breaching on to adjacent residential properties and included removal of an underground tanker containing organic hazardous substances.

The following is a list of Settling Parties to the proposal: ARCO Tool and Die Company, Akron Equipment Company, Akron General Medical Center

Akron Hospital
 Bechtel—McLaughlin, Inc.
 Becton Dickinson and Company
 Browning Ferris Industries of Ohio, Inc.
 Calgon Corp.
 Ceilcote Company, Inc.
 Deft, Inc. of Ohio
 Detrex Chemical Industries, Inc.
 Diamond Shamrock Corp.
 E.I. DuPont de Nemours and Co.
 Edge Industries, Inc.
 Erieway Pollution Control, Inc.
 Ferriot Brothers, Inc.
 Firestone Tire and Rubber
 Ford Motor Company
 General Motors Corp.
 General Tire and Rubber Co.
 Goodyear Aerospace Corp.
 Goodyear Tire and Rubber Co.
 Gould, Inc.
 Harshaw Chemical Company
 Hooker Chemical
 Koppers Company, Inc.
 Lamb Electronics
 Mansfield Graphics, Inc.
 Mansfield Industries, Inc.
 McKesson
 Mobil Oil Corp.
 Monsanto Co.
 Morgan Adhesives Co.
 Norton Co.
 Olin Corp.
 Packaging Corporation of America
 Parker Hannifin Corp.
 PPG Industries
 H.K. Porter
 Reynolds Metals
 Smithers Co.
 St. Thomas Hospital
 Morton Thiokol
 Union Carbide
 Union Process
 Universal Plating, Inc.
 University of Akron
 The Warner & Swasey Co.

A 30-day period, beginning on the date of publication, is open pursuant to Section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to Jennifer Hall, Office of Public Affairs (5PA-14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Daniel J. Bicknell,

U.S. Environmental Protection Agency—
 Remedial Project Manager.

[FR Doc. 88-23895 Filed 10-14-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010099-005.

Title: International Council of
 Containership Operators.

Parties:

Lykes Bros. Steamship Co., Inc.
 Ben Line Containers Ltd.
 A. P. Moller (Maersk Line)
 Koninklijke Nedlloyd Groep N.V.
 Atlantic Container Line Services, Ltd.
 Sea-Land Service, Inc.
 The Australian National Line
 P & O Containers Ltd.
 Hapag-Lloyd AG
 Finmare Group
 United Arab Shipping Co. (S.A.G.)
 Transatlantic Shipping Co., Ltd.
 Hamburg-Sudamerikanische
 Dampfschiffahrts-Gesellschaft
 Eggert & Amsinck
 Orient Overseas Container Line, Ltd.
 Compagnie Generale Maritime
 Transportation Maritima Mexicana
 American President Lines, Ltd.
 Mitsui OSK Lines, Ltd.
 South African Marine Corp., Ltd.
 Wilh. Wilhelmsen
 Compagnie Maritime Belge S.A.
 Neptune Orient Lines Ltd.
 Evergreen International Corp.
 Nippon Yusen Kaisha
 Blue Star Line Ltd.
 Crowley Maritime Corporation

Synopsis: The proposed modification would delete United States Lines, Trans Freight Lines and East Asiatic Co., Ltd. A/S as parties to the agreement. It also would authorize filing counsel to submit similar modifications and provides that a member must give written notification of withdrawal to the Chairman.

By Order of the Federal Maritime
 Commission.

Joseph C. Polking,

Secretary.

Dated: October 12, 1988.

[FR Doc. 88-23902 Filed 10-14-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 4, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. **CNB Bancorp, Inc.**, Gloversville, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The City National Bank and Trust Company of Gloversville, Gloversville, New York.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. **PNC Financial Corp.**, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of The Clayton Bank & Trust Company, Clayton, Delaware.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. **American Bancshares, Inc.**, Marietta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Cobb American Bank and Trust Company, Marietta, Georgia.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice

President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Livingston Southwest Corporation*, Chicago, Illinois; to acquire general partnership interest of 50 percent residual equity interest in Livingston & Company Southwest LP, Chicago, Illinois, and 96 percent of New Mexico Bank Corporation, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Banquest National Bank of Albuquerque, Albuquerque, New Mexico; and First State Bancorporation, Taos, New Mexico, and thereby indirectly acquire First State Bank of Taos, Taos, New Mexico.

Board of Governors of the Federal Reserve System, October 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23842 Filed 10-14-88; 8:45 am]

BILLING CODE 6210-01-M

First Morrill Co.; Acquisition of Companies Engaged in Permissible Nonbanking Activities, Correction

This notice corrects a previous *Federal Register* notice (FR Doc. 88-21369) published at page 36490 of the issue for Tuesday, September 20, 1988.

Under the Federal Reserve Bank of Kansas City, the entry for First Morrill Company, is amended to read as follows:

1. *First Morrill Company*, Omaha, Nebraska; to acquire Morrill Insurance Services, Inc., Morrill, Nebraska, and Ansley Insurance Agency, formerly Gardner/Varney Insurance Agency, Ansley, Nebraska, and thereby engage in offering insurance in towns with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) or as a small bank holding company with total consolidated assets of \$50 million or less under section (b)(8)(vi) of the Board's Regulation Y. The activities pursuant to § 225.25(b)(8)(iii) will be conducted within a 15-mile radius around Morrill, Nebraska, and a 10-mile radius around Ansley, Nebraska. The activities pursuant to § 225.25(b)(8)(vi) will be conducted nationwide.

Comments on this application must be received by November 4, 1988.

Board of Governors of the Federal Reserve System, October 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23839 Filed 10-14-88; 8:45 am]

BILLING CODE 6210-01-M

HUBCO, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 28, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *HUBCO, Inc.*, Union City, New Jersey; to engage *de novo* through its subsidiary, HUB Financial Services, Inc., in making, acquiring, selling and servicing of real estate mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Investment Corporation, Chicago, Illinois, in making and servicing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Comments on this application must be received by November 4, 1988.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoeig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J.R. Montgomery Bancorporation*, Lawton, Oklahoma; to engage in the origination of home mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23844 Filed 10-14-88; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares, Inc., Columbus, OH; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Huntington Bancshares, Incorporated, Columbus, Ohio ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through The Huntington Company, Columbus, Ohio ("Company"), in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Company is currently authorized to engage in providing investment advisory services pursuant to 12 CFR 225.25(b)(4); underwriting and dealing in U.S. government securities pursuant to § 225.25(b)(16); and purchasing and selling precious metals for the account of customers. Company has also received prior approval to provide advice regarding structuring of and arranging of interest rate swaps, interest rate caps, and similar transactions; advice in connection with merger, acquisition/divestiture, financing transactions for nonaffiliated financial and nonfinancial institutions; and

evaluation and fairness opinions in connection with merger, acquisition and similar transaction for nonaffiliated financial and nonfinancial institutions.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities in accordance with all of the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987).

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as The Huntington National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 7, 1988.

Board of Governors of the Federal Reserve System, October 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23841 Filed 10-14-88; 8:45 am]

BILLING CODE 6210-01-M

Thomas J. Steinmetz; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Thomas J. Steinmetz*, Carol J. Steinmetz, and David Thomas Steinmetz, all of Marshfield, Wisconsin; to acquire 15.4 percent of the voting shares of Spencer Bancorporation, Inc., Spencer, Wisconsin, and thereby indirectly acquire Spencer State Bank, Spencer, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *S.R. Evens, Jr.*, Greenwood, Mississippi; to acquire an additional 17.19 percent of the voting shares of Valley Capital Corporation, Cleveland, Mississippi, and thereby indirectly acquire The Valley Bank, Cleveland, Mississippi.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *A.D. Dunclee*, Drayton, North Dakota; John W. Brown, Drayton, North Dakota; and Andell Fortier, Drayton, North Dakota; to each acquire an additional 0.13 percent of the voting shares of Drayton Bancor, Inc., Drayton, North Dakota, and thereby indirectly acquire Drayton State Bank, Drayton, North Dakota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peter Ochs*, Wichita, Kansas; to acquire an additional 21 percent of the voting shares of Attica Financial Corporation, Attica, Kansas, and thereby indirectly acquire First National Bank of Attica, Kansas.

Board of Governors of the Federal Reserve System, October 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23843 Filed 10-14-88; 8:45 am]

BILLING CODE 6210-01-M

West-Central Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 4, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *West-Central Bancorp, Inc.*, Spencer, West Virginia; to acquire at least 51 percent of the voting shares of Bank of Ripley, Ripley, West Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire 100 percent of the voting shares of NBD New Castle Bank, Newark, Delaware, a *de novo* bank.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Central Union Corporation*, Granger, Texas; to acquire 100 percent of the voting shares of First State Bank, Temple, Texas.

Board of Governors of the Federal Reserve System, October 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23840 Filed 10-14-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Notice of Meetings; Neuroscience and Behavior Subcommittee; Alcohol Biomedical Research Review Committee, NIAAA et al.

SUMMARY: This notice sets forth the schedules and proposed agendas of the forthcoming meetings of the agency's initial review committees in the month of November 1988. These committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administration, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: November 2-4; 2:00 p.m.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, California 92109.

Status of Meeting:

Open—November 2: 2:00-4:00 p.m.

Closed—Otherwise.

Contact: Samir Zakhari, Parklawn Building, Room 16C-26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6106.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: November 2-4; 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting:

Open—November 2: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Gloria Yockelson, Parklawn Building, Room 9C-14, 5600 Fisher Lane, Rockville, MD 20857, (301) 443-1367.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of

research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: November 28-29; 8:30 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting:

Open—November 28: 8:30-9:30 a.m.

Closed—Otherwise.

Contact: Monica Woodfork, Parklawn Building, Room 9C-05, 5600 Fisher Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH.

Date and Time: November 28-29; 9:00 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting:

Open—November 28: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Kimberly Crown, Parklawn Building, Room 9C-05, 5600 Fisher Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, Parklawn Building, 5600 Fisher Lane, Rockville, MD 20857, (301) 443-4333.

Date: October 7, 1988.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 88-23847 Filed 10-14-88; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[BERC-600-N]

Medicare Program; Hospice Cap

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces an updated payment cap for hospice care under the Medicare program. The revised cap amount applies to payments made to a hospice during the period November 1, 1987 through October 31, 1988.

EFFECTIVE DATE: The payment cap is effective for the period November 1, 1987 through October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Randal Ricktor, (301) 966-4586.

SUPPLEMENTARY INFORMATION: Section 1812(a)(4) of the Social Security Act (the Act) provides the conditions for Medicare coverage for hospice care for terminally ill beneficiaries. Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in the regulations at 42 CFR 418.302.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap. Each individual hospice's cap amount is calculated by multiplying the yearly cap by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

Section 1814(i)(2)(B) of the Act and § 418.309(a) of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at \$6,500 and specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of \$6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the

medical care expenditure category of the Consumer Price Index (CPI) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year. The hospice cap amount for the period November 1, 1986 through October 31, 1987 was \$7,898, which reflected the original hospice cap amount of \$6,500 increased for inflation from March 1984 to the fifth month of the cap year (March 1987).

For purposes of the cap year that runs from November 1, 1987 through October 31, 1988, an index is needed to measure inflation (or deflation) from March 1984 to March 1988 (the fifth month of the cap year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

Previously, the CPI, including the medical care expenditure category, was published using a base period of 1967 (1967=100). In order to calculate the revised hospice cap amount for previous cap years, we divided the price level in the medical care expenditure category of the CPI for March of the cap year by the March 1984 price level and then multiplied that result by the initial cap amount. For example, to calculate the cap amount for the period November 1, 1986 through October 31, 1987, we divided the March 1987 price level of 455.0 by the March 1984 price level of 374.5 to yield an index of 1.2150 (rounded). We then multiplied the initial cap amount of \$6,500 by 1.2150 to yield a revised cap amount of \$7,898. (See 52 FR 28868, August 4, 1987.)

BLS recently revised the levels of most consumer price indices to restate these indices using a base period of 1982 through 1984 (1982-1984=100). As a result of this change, the numerical value for the March 1984 price level is lower than that used in last year's hospice cap notice. However, the change in the base year has no net effect on the calculation of increases in the hospice cap.

We will calculate the increase to the hospice cap amount for the period of November 1, 1987 through October 31, 1988 by dividing the price level in the restated medical care expenditure category of the CPI for March 1988 by the level in the restated medical care expenditure category of the CPI for March 1984 and then multiply that result by the initial cap amount.

BLS recently released figures that indicate a March 1988 price level in the medical care expenditure category of

the CPI of 136.3. This figure divided by the March 1984 price level of 105.4 yields an index of 1.2932 (rounded). The new hospice cap is the product of \$6,500 and 1.2932, that is, \$8,406. This cap amount applies to hospices for care furnished from November 1, 1987 through October 31, 1988.

This notice merely announces amounts required by legislation and by § 418.309. Although this notice incorporates the restated base period of the medical care expenditure category of the CPI, it contains no change in the methodology used to formulate the hospice cap in effect for the period November 1, 1987 through October 31, 1988. Like prior hospice cap notices, this notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Social Security Act.

(Sec. 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) and 42 CFR 418.309.)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospice Insurance).

Dated: August 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-23859 Filed 10-14-88; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register**, Vol. 49, No. 164, pg. 33342, dated Wednesday, August 22, 1984, **Federal Register**, Vol. 50, No. 44, pg. 9131, dated Wednesday, March 6, 1985, **Federal Register**, Vol. 53, No. 45, dated Tuesday, March 8, 1988) is amended to reflect title changes to the Office of the Associate Administrator for Management and Support Services (AAMSS) and a subordinate office within AAMSS in order to more accurately reflect the responsibilities and functions of the components. Specifically, the AAMSS will be retitled as the Associate Administrator for Management and the Office of Management and Budget will be retitled as the Office of Budget and Administration. The functional statements and administrative codes will remain the same.

The specific changes to Part F. are described below:

- Section FH.20. Office of the Associate Administrator for Management and Support Services (FH) is deleted and replaced with the following:

20. Office of the Associate Administrator for Management (FH).

The Associate Administrator for Management (AAM) is responsible for the direction and implementation of HCFA policies, rules and procedures in the areas of financial, personnel and contracts management, project grant administration, management evaluation and analysis and administrative services; the nationwide operation of a centralized Automated Data Processing (ADP) and telecommunications facility; establishing and maintaining computerized records supporting HCFA programs; administering and actuarial program which includes the analysis of health care financing issues; developing and coordinating information and statistical plans and policies; maintaining a statistical data system which will provide program accountability data to the Administrator, HCFA, the Congress and the public; and equal employment opportunity and civil rights programs.

- Section FH.20. Office of Management and Budget (FHA) is deleted and replaced with the following:

A. Office of Budget and Administration (FHA).

Provides HCFA-wide policy direction, coordination and control in the areas of budget, financial and accounting operations, personnel, management evaluation and analysis, administrative services, project grants, contracting and procurement and workplanning. Develops and promulgates HCFA policy in these areas and executes these policies throughout HCFA. Designs, implements, maintains and provides ADP support to HCFA with respect to personnel management systems, financial management systems, and administrative systems which support the Office of Budget and Administration functions. Provides clerical and manual support in processing a variety of bill, query, enrollment and premium billing transactions. Provides analytical support in the development of procedural instructions for the clerical support staff. Directs a correspondence and control staff with respect to inquiries related to health insurance utilization records. Serves as the Chief Administrative Officer for the Agency.

Date: October 5, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-23905 Filed 10-14-88; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Division of Research Resources; National Advisory Research Resources Council; Change in Time of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council (NARRC), on October 31, 1988, which was published in the *Federal Register*, September 19, (53 FR 36377).

This Council was to have convened at 10 a.m. on October 31, in completely closed session for the review of grant applications. The meeting now will convene in closed session from 9:30 a.m. to 11:00 a.m. in Conference Room 10, Building 31C, National Institutes of Health. The meeting now will be open to the public from 11:00 a.m. to adjournment.

Dated: October 5, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-23837 Filed 10-14-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, November 7, 1988, at The National Institutes of Health, Building 31, Conference Room 11A-10, Bethesda, MD 20892.

This meeting will be open to the public on November 7 from 8:30 a.m. to 12:00 noon. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, and members of the Executive Committee, National Cancer Institute.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A9, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon request.

Dated: October 5, 1988.

Betty J. Beveridge

Committee Management Officer, NIH

[FR Doc. 88-23836 Filed 10-14-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Changes in Times and Place of Meetings

The November 1988 meetings of the review committee of the National Institute of Child Health are to be amended as follows:

Notice is hereby given of a change in the meeting of the Population Research Committee, National Institute of Child Health and Human Development, November 3-4, 1988, Executive Plaza North, 6130 Executive Blvd., Bethesda, Maryland, which was published in the *Federal Register* on September 19, 1988 (53 FR 36375-36376). This committee was to have met in the Executive Plaza North Building, but has been changed to the Congressional Park Days Inn, 1775 Rockville Pike, Rockville, Maryland. The meeting will be open to the public on November 3, from 9:00 a.m. to 10:00 a.m. The meeting will be closed on November 3 from 10:00 a.m. to 5:00 p.m. and on November 4 from 9:00 a.m. to adjournment.

Notice is hereby given of a change in the meeting of the Mental Retardation Research Committee, National Institute of Child Health and Human Development, November 3, 1988, Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland, which was published in the *Federal Register* on September 19, 1988 (53 FR 36375-6). This committee was to have met in the Holiday Inn Bethesda, but has been changed to the Executive Plaza North Building, 6130 Executive Blvd., Bethesda, Maryland. The meeting will be open to the public on November 3 from 9:00 a.m. to 10:00 a.m. The meeting will be closed on November 3 from 10:00 a.m. to adjournment.

Notice is hereby given to the cancellation of the meeting of the Maternal and Child Health Research Committee, National Institute of Child Health and Human Development, November 9, 1988, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland, which was published in the *Federal Register* on September 19, 1988, (53 FR 36375-6).

The meeting was cancelled due to a light work load.

Dated: October 5, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 88-23835 Filed 10-14-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Rotenone

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of rotenone, a pesticide.

Two-year toxicology and carcinogenesis studies were conducted by administering diets containing 0, 38, or 75 ppm rotenone to groups of 50 F344/N rats of each sex for 103 weeks. Groups of 50 B6C3F₁ mice of each sex were administered diets containing 0, 600, or 1,200 ppm rotenone on the same schedule.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity¹ of rotenone for male F344/N rats, as indicated by an increased incidence of uncommonly occurring adenomas of the parathyroid glands. There was no evidence of carcinogenic activity in female F344/N fed diets containing 38 or 75 ppm rotenone. There was no evidence of carcinogenic activity for male or female B6C3F₁ mice fed diets containing 600 or 1,200 ppm rotenone for 2 years. The decreased incidence of liver neoplasms in male mice may have been related to the administration of rotenone.

The study scientist for this bioassay is Dr. Kamal M. Abdo. Questions or comments about the contents of this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819; FTS: 629-7819.

Copies of *Toxicology and Carcinogenesis Studies of Rotenone in F344/N Rats and B6C3F₁ Mice (Feed Studies)* (TR 320) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991; FTS: 629-3991.

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

Dated: October 7, 1988.

David P. Rall,
Director.

[FR Doc. 88-23838 Filed 10-14-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda of Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

Subcommittees of the OCS Advisory Board Scientific Committee will meet at the Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, Florida 33607 (telephone 813-889-8900), from 8:00 a.m. to 5:00 p.m. on November 16, 1988, and from 8:00 a.m. to 5:00 p.m. on November 17, 1988.

The agenda for the meetings will include the following subjects:

- Discussion of Proposed Fiscal Year 1990 studies;
- Update on Status of Fiscal Year 1989 Program;
- Update on Status of Fiscal Year 1988 Program; and
- Update on Status of Long Range Study Plan.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, Reston, Virginia 22091; telephone (703) 648-7866.

Date: October 7, 1988.

Carolita Kallaur,

Acting Associate Director for Offshore
Minerals Management.

[FR Doc. 88-23886 Filed 10-14-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Big Cypress National Preserve, Florida; Notice of Availability of a Plan of Operations for the Purpose of Exploratory Oil Drilling Operations

SUMMARY: Notice is hereby given pursuant to § 9.52(b) of Title 36, Part 9, Subpart B of the Code of Federal

Regulations of the availability for review and comment of a Plan of Operations submitted by Huseman Oil and Royalty, Inc. of Natchez Mississippi for the purpose of exploratory oil drilling in the East Bear Island area of Big Cypress National Preserve.

DATE: Comments received by November 16, 1988, will be entered into the official records.

ADDRESSES: Copies of the Plan of Operations are available for review at: Big cypress National Preserve S.R. Box 110, Satinwood Drive, Ochopee, Florida 33943 Telephone: (813) 695-2000.

Office of Science and Natural Resources, Southeast Regional Office National Park Service, 75 Spring Street, S.W., Atlanta, Georgia 30303 Telephone: (404) 331-4916.

Miami-Dade Public Library, 101 West Flagler Miami, Florida 33130.

Collier County Public Library, 650 Central Avenue, Naples, Florida 33940.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Fagergren, Superintendent, Big Cypress National Preserve, Telephone: (813) 695-2000.

Date: October 7, 1988.

C.W. Ogle,

Acting Regional Director Southeast Region.

[FR Doc. 88-23878 Filed 10-14-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31327]

The Southern Indiana & Ohio River Railway CO.—Acquisition and Operation Exemption Rail Line in Dubois County, IN

The Southern Indiana & Ohio River Railway Company (SIORRC), has filed a notice of exemption to acquire and operate a 4.0-mile line of railroad between milepost 67.3 near Cuzco, IN and milepost 63.3 near Dubois, IN, serving Crystal Station, IN, now owned as a private spur track by the Indiana Railway Museum, a noncarrier. This transaction will be consummated upon the effective date of this notice.

SIORRC must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. See *Class Exemption—Acq. &*

*Oper. of R. Lines Under 49 U.S.C. 10901, 4 I.C.C.2d 305 (1988).*¹

Any comments must be filed with the Commission and served on Carl M. Miller, P.O. Box 246, 407 Broadway, New Haven, IN 46774-0246.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 4, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-23712 Filed 10-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 305X)]

Burlington Northern Railroad Co.; Exemption to Abandon Railroad Line in St. Charles County, MO, and Madison County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.03-mile line of railroad between milepost 0.00 near West Alton, St. Charles County, MO, and milepost 3.03 near Alton, Madison County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line or may be rerouted; and (2) no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

¹ SIORRC has certified that it has identified such sites and structures to the appropriate State Historic Preservation Office for Indiana.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 16, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by October 27, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 7, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, Burlington Northern Railroad Company, 3800 Continental Plaza, Fort Worth, TX 76132.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 22, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-23713 Filed 10-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 11X)]

**Norfolk and Western Railway Co.;
Abandonment Exemption of Railroad
Line Between Buck Creek Branch
Junction, WV and Warfield, KY**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.28-mile line of railroad between milepost BC-0.25 near Buck Creek Branch Junction, WV, and milepost BC-1.53 at Warfield, KY.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 16, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by October 27, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 7, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

applicant's representative: F. Blair Wimbush, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, resulting from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: October 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-23714 Filed 10-14-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

**Immigration Related Unfair
Employment Practices, Special
Counsel; Declaration of Intending
Citizen Filing Requirements**

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given that Immigration and Naturalization Service (INS) form I-772, "Declaration of Intending Citizen", may be filed with either the Office of Special Counsel for Immigration Related Unfair Employment Practices (Office of Special Counsel) or the Immigration and Naturalization Service (INS) and that the INS has appointed the Special Counsel as its agent for this and other I-772 purposes.

EFFECTIVE DATE: This notice is effective October 12, 1988 and will be given retroactive effect.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (800) 255-7688 (toll free) or (202)

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

653-8121 (Voice) or (202) 653-5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel, (800) 255-7688 (toll free) or (202) 653-8246 (Voice) or (202) 653-5710 (TDD).

SUPPLEMENTARY INFORMATION: The filing procedure for Immigration and Naturalization Service (INS) form I-772, "Declaration of Intending Citizen" has caused some concern among those who deal with the Office of Special Counsel. This notice sets forth an additional way the I-772 may be filed and sets forth the agreement between the INS and the Special Counsel allowing this to be done.

Under section 102 of the Immigration Reform and Control Act of 1986 (IRCA), protection from citizenship status discrimination is afforded citizens, nationals, and "intending citizens." Among other requirements, an intending citizen is an alien who "evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen." (8 U.S.C. 1324b(a)(3)(B)). IRCA permits temporary residents under the new legalization program, refugees, asylees, and permanent residents, to qualify for intending citizen status.

When IRCA was passed, the only declaration of intention form suited to that requirement was INS Form N-315. That form, however, had fallen into disuse and could be executed only by permanent residents. Thus, a new form had to be created. The INS created the I-772 to meet this need.

Originally the I-772 could be filed only with the INS office having jurisdiction over the filing alien's place of residence. Subsequently, the INS instructed all its field offices that the form may be filed in person or by mail with any INS officer of any service facility.

Despite the INS' efforts to inform the public of the correct filing procedures, confusion has persisted. Since the only purpose of the I-772 is to meet the statutory requirement for filing of a citizenship status discrimination charge with the Office of Special Counsel, many aliens have logically, but incorrectly, assumed it should be filed with this Office. Because this was contrary to the filing instructions, the Office of Special Counsel was compelled to return these forms to the aliens for filing with the INS, thus delaying the processing of charges.

This notice announces that I-772 forms may now be filed with either the INS or the Office of Special Counsel for Immigration Related Unfair Employment Practices. I-772 forms previously filed

with this Office will be considered as having been properly filed. The INS will issue revised instructions to its personnel concerning this change in filing procedure. The instructions on the form itself will be modified once current supplies are exhausted. The Office of Special Counsel will also be responsible for maintaining the filed I-772 forms.

The INS has entered into an agreement with the Special Counsel naming the Special Counsel as its agent for these purposes. This agreement reads:

Agreement Between the Immigration and Naturalization Service and the Office of Special Counsel for Immigration Related Unfair Employment Practices

The Immigration and Naturalization Service (INS) requires that aliens who wish to file INS form I-772, "Declaration of Intending Citizen" file it with an INS officer. The INS maintains the I-772 files. The sole purpose of the I-772 is to allow aliens to file citizenship status discrimination charges under section 102 of the Immigration Reform and Control Act of 1986 with the Special Counsel for Immigration Related Unfair Employment Practices (Special Counsel). This Agreement between the INS and the Special Counsel allows aliens to file the I-772 with the Special Counsel as well as with the INS, and allows the Special Counsel to maintain the filed I-772s. This will resolve and confusion aliens may have as to where to file an I-772, and will prevent any loss of rights arising from an alien improperly filing an I-772 with the wrong agency.

The INS hereby appoints the Special Counsel as its agent for the purposes of receiving and maintaining INS forms I-772, "Declarations of Intending Citizen."

The Immigration and Naturalization Service.

Alan C. Nelson,
Commissioner.

Dated: October 3, 1988.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

Lawrence J. Siskind,
Special Counsel.

Dated October, 6, 1988.

Lawrence J. Siskind,
Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 88-23884 Filed 10-14-88; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. 88-2933]

Pollution Control; Lodging of Consent Decree; Fairchild Industries, Inc., et al.

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on September 30, 1988, a proposed consent decree in *United States v. Fairchild Industries, Inc., et al.*, Civil Action No. R-88-2933 was lodged with the United States District Court for the District of Maryland.

The proposed consent decree requires the defendants to implement the interim remedial action selected by the Environmental Protection Agency (EPA) to address the imminent and substantial endangerment to human health and the environment posed by the release or threat of release of hazardous substances at the Limestone Road Site in Allegheny County, Maryland, 2.5 miles southeast of Cumberland, Maryland, and to perform a Remedial Investigation and Feasibility Study for that site. The interim remedy, to be conducted by the defendants, includes grading the site, capping contaminated soil and fencing the area of contamination. The parties to the consent decree are the United States, Fairchild Industries, Inc., and Cumberland Cement and Supply Co.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Fairchild Industries, Inc.*, DJ Ref. 90-11-3-227.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, 8th Floor, U.S. Court House, 101 W. Lombard Street, Baltimore, Maryland 21201 and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division,

Department of Justice. In requesting a copy, please enclose a check in the amount of \$5.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-23856 Filed 10-14-88; 8:45 am]

BILLING CODE 4410-01-M

[Civil Action No. TH87-19-C]

Pollution Control; Lodging of Consent Decree to the Clean Air Act; Vigo Blacktoppers, Inc., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States of America v. Blacktoppers, Inc. and W.C. Hargis and Son, Inc.*, Civil Action No. TH87-19-C, was lodged with the United States District Court for the Southern District of Indiana. The complaint filed by the United States in this action alleged that defendants violated sections 111 and 114 of the Clean Air Act by operating a hot mix asphalt facility located in Montezuma, Indiana (the "Montezuma facility") without conducting required new source performance tests in accordance with 40 CFR 60.8 and by exceeding applicable limitations governing the allowable particulate content and opacity of emissions from such facility.

The proposed consent decree would prohibit defendants from operating the Montezuma facility, except for the limited purpose of conducting emission tests in accordance with an approved test protocol, until the United States Environmental Protection Agency certifies that the Montezuma facility has attained compliance with applicable particulate and opacity standards. If defendants do not submit test results demonstrating compliance with applicable emissions standards within three years after entry of the consent decree, they would be required to cease operation of the Montezuma facility permanently. The proposed decree also requires defendants to pay a civil penalty of \$10,000 for violations of sections 111 and 114 of the Clean Air Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and, should refer to *United States of*

America v. Vigo Blacktoppers, Inc. and W.C. Hargis and Son, Inc., D.J. Ref. No. 90-5-2-1-1036.

The proposed Consent Decree may be examined at the office of the United States Attorney, 274 Federal Building and United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.20 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Rogers Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-23855 Filed 10-14-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 24-88]

Privacy Act of 1974; Privacy Act Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A-130, the Department has completed a review of its Privacy Act "systems of records" (as defined by the Privacy Act) to identify minor changes that will more accurately describe these records. As a result, nine Department components are republishing the systems of records named below in the table of contents; other components have no changes to report; and others are postponing publication due to pending changes which they believe will contribute to more accurate reporting in the near future.

The systems notices are reprinted below following a table of contents, and changes to the systems of records have been italicized for public convenience. Included, for example, are editorial revisions which clarify system descriptions. Also included are changes to system locations and system manager addresses, retention and disposal schedules, and storage capabilities. Finally, in response to Pub. L. 98-497 (44 U.S.C. 2102), a routine use is modified.

The routine use was originally drafted to permit records disclosure to the National Archives and Records Administration (NARA), General Services Administration (GSA), during records management inspections. However, the public law renamed NARS as the "National Archives and Records Administration" (NARA), and established it as a separate agency which nonetheless shares its records management inspection responsibilities with GSA. The routine use has been modified to show that NARA and GSA are now separate agencies which continue to share access to records during these inspections. Comments on the routine use may be addressed to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street NW., Washington, DC 20530. Please submit any comments by November 16, 1988.

Date: September 27, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

Table of Contents

Antitrust Division (ATR)

JUSTICE/ATR-002, Congressional and White House Referral Correspondence Log File
JUSTICE/ATR-005, Antitrust Caseload Evaluation System (ACES)—Time Reporter
JUSTICE/ATR-006, Antitrust Caseload Evaluation System (ACES)—Monthly Report
JUSTICE/ATR-007, Antitrust Division Case Cards

Civil Division (CIV)

JUSTICE/CIV-001, Civil Division Case File System
JUSTICE/CIV-005, Freedom of Information/Privacy Acts File
JUSTICE/CIV-006, Consumer Inquiry/Investigatory System
JUSTICE/CIV-007, Congressional and Citizen Correspondence File

Civil Rights Division (CRT)

JUSTICE/CRT-001, Central Civil Rights Division Index File and Associated Records System
JUSTICE/CRT-003, Civil Rights Case Load Evaluation System—Time Reporting System
JUSTICE/CRT-004, Registry of Names of Interested Persons Desiring Notification of Submissions Under Section 5 of the Voting Rights Act
JUSTICE/CRT-007, Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission
JUSTICE/CRT-008, Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice
JUSTICE/CRT-009, Civil Rights Division Travel Reports

JUSTICE/CRT-010, Freedom of Information; Privacy Acts Records

Executive Office for Immigration Review (EOIR)

JUSTICE/EOIR-001, Records and Management Information System

JUSTICE/EOIR-999, Appendix to Executive Office for Immigration Review System of Records

Immigration and Naturalization Service (INS)

JUSTICE/INS-001, The Immigration and Naturalization Service Index System

National Central Bureau—Interpol (Interpol)

JUSTICE/INTERPOL-001, The Interpol—United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) INTERPOL—USNCB Records System

Office of Justice Programs (OJP)

JUSTICE/OJP-004, Grants Management Information System (PROFILE)

JUSTICE/OJP-005, Financial Management System

JUSTICE/OJP-008, Civil Rights Investigative System

JUSTICE/OJP-009, Federal Advisory Committee Membership Files

JUSTICE/OJP-010, Technical Assistance Resource Files

JUSTICE/OJP-011, Registered Users File—National Criminal Justice Reference Service (NCJRS)

Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC)

JUSTICE/OSC-001, Central Index and Associated Records

JUSTICE/OSC-002, Files on Correspondence Relating to Immigration Related Unfair Employment Practices from Persons Outside the Department of Justice

United States Parole Commission (PRC)

JUSTICE/PRC-004, Labor and Pension Case, Legal File and General Correspondence System

JUSTICE/PRC-005, Office Operation and Personnel System

JUSTICE/PRC-007, Workload Records, Decision Result, and Annual Report System

JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress and citizens whose correspondence is referred by Congressional or White House staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to inquiries or referrals of citizen correspondence from members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exist under 44 U.S.C. 3101 and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is maintained as a record of inquiries or referrals by members or committees of the Congress and by White House staff. Routine use is made of this file by Antitrust Division personnel incident to monitoring the response status of or indentifying other material related to such inquiries or referrals.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in loose-leaf binders and file folders; abbreviated or summarized information is stored in a computerized tracking system.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc. Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, summary data is retrieved from magnetic disks and tapes. Summary data consists of such data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records (e.g., that Congressional or White House correspondence), reflecting inquiries or referrals of citizen correspondence by members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-005**SYSTEM NAME:**

Antitrust Information Management System (AMIS)—Time Reporter.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Ave., NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional employees of the Antitrust Division of the U.S. Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the employees' name and allocations of his/her work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file will be established and maintained pursuant to the following authorities: 28 CFR 0.40(f), 28 U.S.C. 522, 31 U.S.C. 11, 31 U.S.C. 66a, 5 U.S.C. 301, and 2 U.S.C. 601.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel to keep track of resources and as a basis for determining Antitrust Division allocations of resources (professional time) to particular products and industries (e.g., oil, auto, chemicals) and to broad categories of

resource use such as conspiratorial conduct, oligopoly and monopoly, civil cases, criminal cases, and proceedings before regulatory agencies. In addition, the file will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from the system of records may be disclosed to NARA and GSA for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained electronically in the AMIS computerized information system.

RETRIEVABILITY:

Information is retrieved by a variety of key words, including names of individuals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with

Department rules and procedures governing the handling of computerized information. Access to the file is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the file is retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group, Antitrust Division, U.S. Department of Justice 555 4th Street NW., Room 11-854, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

Same as Notification.

CONTESTING RECORD PROCEDURES:

Same as Notification.

RECORD SOURCE CATEGORIES:

Information on time allocation is provided by Antitrust Division section and field office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-006**SYSTEM NAME:**

Antitrust Information Management System (AMIS)—Matter Report.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional employees of the Antitrust Division of the U.S. Department of Justice and individual defendants and investigation targets involved in past and present Antitrust investigations and cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division employees and their case/investigation assignments and the names of individual defendants/investigation targets as they relate to a specific case/investigation. In addition, information reflecting the current status and handling of Antitrust cases/investigations is included within this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file is established and maintained pursuant to 28 CFR 40(f), 28 U.S.C. 522, and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel as a basis for determining Antitrust Division allocation of resources to particular products and industries (e.g., oil, autos, chemicals), to broad categories of resource use such as civil cases, criminal cases, regulatory agency cases, and Freedom of Information Act requests. It is employed by the section chiefs, the Director and Deputy Director of Operations, and other Division personnel to ascertain the progress and current status of cases and investigations within the Division. In addition, the files will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may

be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routing use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are maintained electronically in the Information systems support group's AMIS Computerized information system

RETRIEVABILITY:

Information is retrieved by a variety of key words.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Access to the file is limited to those persons whose official duties require such access and employees of the Antitrust Division.

RETENTION AND DISPOSAL:

Information contained in the file is retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group; Antitrust Division; U.S. Department of Justice; 555 4th Street NW., Room 11-854, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, Washington, DC 20530.

RECORD SOURCE CATEGORIES:

Information for the monthly reports is provided by the Antitrust Division section and filed office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(4)(G)-(H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules

have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

JUSTICE/ATR-007**SYSTEM NAME:**

Antitrust Division Case Cards.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the United States under the antitrust laws where the defendant's name appears in the case title.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included information is proper case name, the judicial district, number of the case, the commodity involved, each alleged violation, the section of the Antitrust Division responsible for the matter, and the disposition of the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel. It is utilized for referrals to case names, the preparation of speeches and to aid in determinations of the antitrust histories of companies.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust

Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is maintained on index cards.

RETRIEVABILITY:

Information is retrieved by case name.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. This area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, *Freedom of Information Act/Privacy Act* Unit, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington DC 20530

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a "Privacy Access Request." Included in the request should be the name of the defendant appearing in the title of the pending or terminated Government

antitrust litigation. Requester should indicate a return address. Requests will be directed to the System Manager above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to be information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those records reflecting litigation conducted by the Antitrust Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CIV-001

SYSTEM NAME:

Civil Division Case File System.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice 10th Street NW., Washington, DC 20530; Record Management Unit, 5320 Marinelli Road, Rockville, MD 20852; and Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals referenced in potential or actual cases and matters under the jurisdiction of the Civil Division; and attorneys, paralegals, and other employees of the Civil Division directly involved in these cases or matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records in this system pertain to a broad variety of litigation under the jurisdiction of the Civil Division relating to torts, civil fraud and other commercial matters, federal programs and national security, immigration, and consumer issues. The case files contain court records, inter-agency and intra-agency correspondence, and legal research. These records may include civil investigatory and/or criminal law enforcement information and information classified pursuant to Executive Order to protect national security interests. (2) Summary information (i.e., names of principal parties or subjects, case file numbers, assignments, status, and classification) of these cases or matters is maintained prior to FY 78 on index cards and from FY 78 in an automated case tracking system. (3) A timekeeping function for attorneys, paralegals, and other

employees of the Civil Division directly involved in litigation supplements the automated case tracking system from May of 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101. The particular system was established in accordance with 28 CFR 0.77(f) and 28 U.S.C. 552 and was delegated to the Civil Division pursuant to the memorandum from the Deputy Attorney General, dated July 17, 1974.

PURPOSE OF THE SYSTEM:

Case records are maintained for the purpose of litigating or resolving any case or matter under consideration by the Civil Division. The automated case tracking and timekeeping system exists for the purpose of managing and evaluating the Division's litigative activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or is responsible for acquiring information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the agency or officials thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify

the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter (4) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement (5) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (6) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; (7) a record, or any facts derived therefrom, may be disclosed in a grand jury proceeding or in a proceeding before a court or adjudicative body before which the Civil Division is authorized to appear when the United States, or any agency or subdivision thereof, is a party to litigation and such records are determined by the Civil Division to be arguably relevant to the litigation; (8) to facilitate processing Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records; (9) information may be released to the news media and the public in accordance with 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy; (10) a record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in file cabinets and on index cards. Automated records are stored on magnetic disks.

Classified information is stored in locked safes.

RETRIEVABILITY:

Manual records are retrieved by file number. This number can be obtained from index cards arranged alphabetically by subject name for records received prior to FY 78 and from logical queries to the computer-based data for FY 78 and subsequent years.

SAFEGUARDS:

Classified information is maintained in locked safes. Access to all information is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information.

RETENTION AND DISPOSAL:

When a case file is closed by the responsible attorney, it is sent to the Federal Records Center for retention in accordance with the authorized Record Disposal Schedule for the classification of the case. Such schedules are approved by the National Archives.

After the designated period has passed, the file is destroyed. However, the index and docket cards are not purged. Automated records constitute a cumulative resource file for which there are no plans to delete records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue NW., Washington DC 20530.

RECORD ACCESS PROCEDURES:

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). Submit in writing all requests for access to those portions not so exempted to the system manager identified above. Clearly mark the envelope and letter "FOI/PA Request" and provide a return address. The subject of the record should also provide his/her full name and notarized signature, date and place of birth, case caption, or other information which may assist in locating the records sought.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the

system should direct their request to the Assistant Attorney General, Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530. The request should clearly state what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information may be obtained from all individuals referred to in all cases or matters under consideration of the Civil Division. Timekeeping information is obtained from all Civil Division attorneys, paralegals, and other employees directly involved in such litigation or matters.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). That is, these exemptions apply only to the extent that the file contains information which has been properly classified pursuant to an Executive Order, or to the extent that it contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/CIV-005

SYSTEM NAME:

Freedom of Information/Privacy Acts File.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 550 11th Street, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of Civil Division records pursuant to the Freedom of Information Act (FOIA); persons who request access to or correction of records pertaining to themselves contained in Civil Division systems of records pursuant to the Privacy Act (PA); persons whose FOIA or PA requests for records have been referred to the Civil Division by another component of Department of Justice or another agency, and, where applicable, persons about whom records have been requested.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The manual records consist of FOIA and PA requests for Civil Division records; related correspondence and memoranda; and copies of records from other PA systems of records responsive to the requests, which may include information concerning national security, civil investigations, and criminal law enforcement matters. (2) An automated record of selected data which has been extracted from each case file is maintained on magnetic diskettes as an index to the files, to follow the progress of the requests, and to obtain statistical data for monthly and annual reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

These records are maintained for the purpose of processing administrative requests and appeals under the Freedom of Information and Privacy Acts and complying with reporting requirements of the Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records.

(2) A record may be disclosed to the National Archives and Records Administration and to the General Services Administration to conduct records management inspections authorized by 44 U.S.C. 2904 and 2906.

(3) Information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSAL OF RECORDS IN THE SYSTEM:**STORAGE**

The request records (manual) are stored in cabinets. Classified information is stored in a locked file cabinet. Automated records are maintained on magnetic diskettes.

RETRIEVABILITY:

Files are retrievable by the requester's name or if filed chronologically by the requester's name and the date of final response.

SAFEGUARDS:

Classified information is maintained in locked safes. Access to all information is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. All records are stored in offices which are occupied during the day and locked at night.

RETENTION AND DISPOSAL:

The file is destroyed after the designated period has passed in accordance with the General Records Schedule 14, items 16, et seq. and 25, et seq.

SYSTEM MANAGER AND ADDRESS:

Assistant Attorney General, Civil Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above, c/o FOI/PA Office. The envelope and letter should be clearly marked "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST."

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST." The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the system manager listed above, c/o the FOI/PA Office.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct a request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked "FREEDOM OF INFORMATION/PRIVACY ACTS REQUESTS."

RECORD SOURCES CATEGORIES:

The source of information contained in this system are the individuals

making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in the Civil Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4), (G) and (H), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). That is, these exemptions apply only to the extent that the file contains information which has been properly classified pursuant to an Executive Order or to the extent that it contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

JUSTICE/CIV-006**SYSTEM NAME:**

Consumer Inquiry/Investigatory System.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 666 11th Street NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with complaints or inquiries on consumer matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of complaints and inquiries from private individuals, any replies thereto and other correspondence and internal memoranda related to the investigation of such inquiries for violations of criminal or civil Federal law.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

U.S.C. 3101; 5 U.S.C. 301.

PURPOSE OF THE SYSTEM:

These records are maintained for the purpose of responding to consumer complaints or inquiries and to further or initiate investigations for law enforcement purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A complaint/inquiry, or any information developed in response thereto may be disclosed to other Federal, State or local agencies for law enforcement purposes, to ensure

complete action on the matter, or to better assess consumer-related problems and programs.

(2) A complaint/inquiry or any information derived therefrom may be disclosed to a private firm that is the subject of a complaint/inquiry to resolve the issues raised in the complaint/inquiry or to fulfill the Department's law enforcement responsibilities.

(3) To facilitate processing Freedom of Information and Privacy Act requests for these records, a record may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records.

(4) A record or information derived therefrom may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy.

(5) A record may be disclosed to the National Archives and Records Administration and to the General Services Administration to conduct records management inspections authorized by 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders in cabinets.

RETRIEVABILITY:

Information is retrieved by name subject matter and date.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Civil Division personnel in the area where the system is maintained. The area is locked during non-duty hours.

RETENTION AND DISPOSAL:

In accordance with the General Record Schedule 14, item 6, records are retained for one year after close of the file or completion of the project, after which the files are destroyed.

SYSTEMS MANAGER AND ADDRESS:

Assistant Attorney General, Civil Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Civil Division, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be written and clearly identified as a "Privacy Access Request." The request should include the name of the party making the inquiry and the date of the inquiry. The requester should indicate a return address. The request should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought. The request should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Sources of records maintained in the system are the public inquiries, and information provided by private firms regarding the subject matter of such inquiries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4), (d), (e)(1) and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k) (2). That is, these exemptions apply only to the extent that the file contains records combined for civil or criminal law enforcement purposes. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/CTV-007

SYSTEM NAME:

Congressional and Citizen Correspondence File.

SYSTEM LOCATION:

Civil Division, U.S. Department of Justice, 550 11th Street NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and past members of Congress who correspond with the Department on civil and other related matters; and (2) Private individuals who

correspond with the Department of civil and other related matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The records consist of written inquiries from private individuals (or Members of Congress) on various matters, including requests for action on Private Relief Bills, and copies of responses thereto. Included also may be internal memoranda and other materials compiled in connection with the underlying criminal or civil investigation of such matters. (2) An automated record of selected data which has been extracted from each request file is maintained on magnetic diskettes as an index to the files, to follow the progress of the correspondence, and to obtain statistical data for monthly and fiscal reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

These records are maintained for the purpose of permitting Civil Division and other Department of Justice personnel to respond to congressional and public inquiries, requests, or complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record, or any facts derived therefrom, may be referred or conveyed to other Federal, State, or local agencies for consultation or for direct response by that agency to the inquiry.

(2) To facilitate processing of Freedom of Information and Privacy Act requests for these records, information may be disclosed to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records.

(3) A record may be released to the National Archives and Records Administration and to the General Services Administration to conduct records management inspections authorized by 44 U.S.C. 2904 and 2906.

(4) Information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Inquiry records (manual) are stored in file folders in cabinets. Automated records are maintained on magnetic diskettes.

RETRIEVABILITY:

The files are retrievable by date of final response, name of correspondent, or by subject matter.

SAFEGUARDS:

Access to records is limited to Department of Justice personnel who have need for the records to perform their duties. Automated records are safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Information contained in the system is unclassified. The files are maintained in a room that is occupied by office personnel during the day and locked at night.

RETENTION AND DISPOSAL:

In accordance with the useful life of these records, the files retained for two years after final response after which the files are destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant Attorney General, Civil Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above. c/o FOI/PA Office. The envelope and letter should be clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST."

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and letter clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST." The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the system manager listed above, c/o the FOI/PA Office.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct a request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be

clearly marked, "FREEDOM OF INFORMATION/PRIVACY ACTS REQUEST."

RECORD SOURCE CATEGORIES:

Sources of information maintained in the system are congressional and citizen correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). That is, this exemption applies only to the extent that the file contains investigatory and other law enforcement materials. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the *Federal Register*.

JUSTICE/CRT-001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice Civil Rights Division (CRT) 10th and Constitution Avenue NW., Washington, DC 20530; HOLC Building, 320 First Street NW., Washington, DC 20534; and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigations, victims, potential witnesses, correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondence cases, matters, and memoranda, including, but not limited to, investigative reports, correspondence to and from the Division memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal

subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all CRT cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice, and such other matters as may be required to fulfill the duties mandated by Congress.

The record related to the duties of the Coordination and Review Section of CRT include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the enforcement of Title VI of the Civil Rights Act of 1964. Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex, handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12236 to monitor review of their enabling legislation on the basis of sex. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some cases involving maritime law, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c, 42 U.S.C. 2000h-2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance and section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701), and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Employment Litigation Section of CRT include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e(k)). In addition, the records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers. Federal contractors and subcontractors involved in federally financed projects, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Housing and Civil Enforcement Section of CRT include cases or matters involving the Fair Housing Act of 1968 (42 U.S.C. 3601 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations, Regulation B (12 CFR Part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except those Title III matters that involve prison facilities) and cases or

matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Special Litigation Section of CRT include cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutional juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended, and such other matters as may be required to fulfill the duties mandated by Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings: to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of CRT and to carry out other authorized internal functions of the Department.

B. A record maintained in this system of records may be disseminated as a routine use of such records as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course of investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or expert analysis or to

obtain the cooperation of a prospective witness or information; (3) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or the party's attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d.; (8) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject of CRT records.

Release of information to the National Archives and Records Administration: (NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management

inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tapes.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals or organizations that have been involved in possible civil rights violations either as the subject of investigations by the Department or as victims or complainants, or by the name of the Division personnel handling the complaint. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Department security regulations for system of records. Final disposition is in accordance with records retirement or destruction as scheduled by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administrative Management Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be any agency or person who has or offers information related to the law enforcement responsibilities of the Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (c) and (e) and have been published in the *Federal Register*.

JUSTICE/CRT-003

SYSTEM NAME:

Civil Rights Case Load Evaluation System—Time Reporting System.

SYSTEM LOCATION:

United States Department of Justice, *Civil Rights Division (CRT)*, 10th and

Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and paralegals of CRT of the United States Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division attorneys and paralegals and their assignments and allocation of work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CRT personnel use this system or records to keep track of resources, i.e., to determine CRT allocations of resources and professional time to individual assignments of cases and broad categories of cases (e.g., voting, criminal, enforcement), and to assist in preparing budget requests and other reports which may be submitted to the Attorney General or the Congress.

A record relating to this system, or an facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement or the case of matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject of CRT records.

Release of information to the National Archives and Records Administration

(NARA) and to the General Services Administration (GSA): A record from the system or records may be disclosed to NARA and GSA for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Information is retrieved by the names of attorneys or paralegals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental security regulations for systems or records. Access to the records is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Records are maintained in the system while current and required for official Government use. When no longer needed on an active basis, the records are stored in accordance with Departmental security regulations for systems of records. Final disposition is in accordance with General Records Schedule 5, item 4.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administrative Management Section, Civil Rights Division, United States Department of Justice, 10th and Constitution Avenue, NW., Washington D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager listed above.

RECORD ACCESS PROCEDURE:

A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual involved, his or her current address, date and place of birth, and notarized signature (28 CFR 16.42(b)), and any other information which is known and may be of assistance in locating the record. The requester should provide a return address for transmitting the information. Access to request should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring the contest or amend their records should direct their

request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information on time-allocation is provided by CRT attorneys and paralegals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE-CRT-004

SYSTEM NAME:

Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), 320 First Street, NW., Washington, D.C. 20530 and U.S. Department of Justice, 10th and Constitution, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested that the Attorney General send them notice of submissions under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registry contains the name, address and telephone numbers of interested parties, and, where appropriate, the area or areas with respect to which notification was requested by such persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 FR 877 (1981) codified in 28 CFR 51.30, 42 U.S.C. 1973c, 5 U.S.C. 301 and 28 U.S.C. 509.510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Registry is used to identify persons interested in receiving notice of Section 5 submissions and to comply with their requests. The Registry may be used to notify the persons listed therein of any proposed changes in the "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965," 46 FR 870 (1981) codified in 28 CFR Part 1, and to solicit their comments which respect to any such proposed changes.

A record relating to this system, or any facts derived therefrom, may be

disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Names are stored in a card file system, and an automated addresser.

RETRIEVABILITY:

Records in this system are retrievable by the names of interested persons are organizations.

SAFEGUARDS:

Information in the system is safeguarded in accordance with Departmental rules and procedures governing access, production and

disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

An individual or organizational name is retained in the Registry until such time as that person or organization request that the name be deleted.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Voting Section, Civil Rights Division, U.S. Department of Justice Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

This system contains no information about any individual other than as described in Category of Record above. Persons whose names appear on the Registry may have access thereto or have their names and other information pertaining to them deleted or modified upon a request of the same nature as indicated in 46 FR 877 (1981) Codified in 28 CFR 51.30.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Sources of information in the Registry are those persons or organizations whose names appear therein by virtue of their having requested inclusion in the Registry pursuant to 46 FR 877 (1981) codified in 28 CFR 51.30.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-007

SYSTEM NAME:

Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking employment or employed by a state or a political subdivision of a state who have filed charges alleging discrimination in employment with the Equal Employment Opportunity Commission (hereinafter EEOC) which have resulted in a determination by EEOC that there is probable cause to believe that such

discrimination has occurred, and attempts by EEOC at conciliation have failed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain copies of charges filed with EEOC, copies of EEOC's "determination" letters, letters of transmittal from and to EEOC, analyses or evaluations summarizing the charge and other materials in the EEOC file, internal memoranda, attorney notes, and copies of "right to sue" letters issued by CRT. Charges related to allegations of employment discrimination by public employers filed by individual complainants which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-5(f)(1) or 5(f)(2), or to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-6.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under authority of 44 U.S.C. 3101 and in the ordinary course fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to make decisions regarding prosecution of alleged instances of employment discrimination; to issue right to sue letters on behalf of individuals; to make policy and planning determinations; to prepare annual budget requests and justifications; to prepare statistical reports on the work product of the Employment Litigation Section and to carry out other authorized internal functions of the Department. If the Department has determined to initiate an investigation or litigate a matter referred by EEOC the records pertaining to that matter are not contained in the system. Such records and their routine uses are described under the notice for the system named: Central CRT Index File and Associated Records.

A record relating to this system, or any facts derived therefrom may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation. A record

relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Releases of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the systems is stored on index cards, in file jackets, and in computer disks which are maintained by the Employment Litigation Section, Civil Rights Division. If the charge related to a public educational agency or institution and was filed before September 1977, such information may be maintained by the Educational Opportunities Section, Civil Rights Division.

RETRIEVABILITY:

Information is retrieved primarily by using the appropriate Department of Justice file number, or the name of the charging party, or the state in which the alleged discrimination occurred or through, other logical queries to the computer based system.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in

accordance with applicable Departmental security regulations for systems of records. Only limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

If the Department determines not to prosecute a matter referred by the EEOC, the records transmitted with the referral are returned to the EEOC. Other records in the system are kept for routine use by the Department and when no longer needed are sent to the Federal Records Center or are destroyed in accordance with records retention and disposal schedules as established by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The request should indicate the state where the alleged employment discrimination took place and the employer to which the charge was related. The requester should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Disclosure of part of the material in this system may be prohibited by 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e) and 44 U.S.C. 3510(b). Part of this system is exempted from access and contest under 5 U.S.C. 552a(k)(2).

RECORD SOURCE CATEGORIES:

Source of information in this system are charging parties, information compiled and maintained by EEOC, and employees and officials of the

Department of Justice responsible for the disposition of the referral request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted the system from subsection 9d) of the Privacy Act pursuant to 5 U.S.C. 552(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and have been published in the Federal Register.

JUSTICE/CRT-008

Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons communicating in written form in person or by telephone, including complaints, requests for information or action, or expressions of opinion regarding civil rights matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains original correspondence regarding civil rights matters from persons, cover letters or notes from persons referring original correspondence to the Department attorney or other employees notes regarding the correspondence, and copies of CRT responses to the original correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained pursuant to 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to respond to incoming correspondence, to compile statistics for use in preparation budget requests, to insure proper disposition of incoming mail, to determine the status and content of responses to correspondence, to respond to inquiries from Division personnel, Office of Legislative Affairs and Congressional offices regarding the status of correspondence, and to carry out other authorized functions of the Department.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a

court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

Information in the system regarding individual pieces of correspondence may be provided to Members of Congress upon request in instances where the Members making the request referred the correspondence in question to the Department.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily index cards and original letters of copies thereof.

The index cards and incoming letters are stored in filing cabinets in locked offices, and on disks for automated office equipment; correspondents'

names, file numbers, the type of complaints, CRT response to complainants or other corresponding persons, and records of referrals are stored on magnetic cartridges for access by computer.

RETRIEVABILITY:

Information may be retrieved through use of card index file system, automated office equipment, or by logical queries to the computer based system. The information on the index cards, on disks for automated office equipment, and on the computer is organized into indexes (1) arranged according to the name of citizens that corresponded with the Department and (2) arranged to the name of members of Congress or White House staff Members who have referred correspondence to the Department.

SAFEGUARDS:

Information in the system is unclassified. Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security/regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information. All records in the system are protected by locks on the storage facility, computer, and by locks on the room that contains the records.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule 23, item 4.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access request." The request should include the name of the correspondent, his address or the name of the Member of Congress or White House staff member who referred the correspondence to the Department, if known, the Department of Justice file number, if known, and the date of the correspondence. The requester will also provide a return address for transmitting the information. Access requests will be directly to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amendment information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the original correspondents, person referring original correspondence to the Department, and employees and officials of the Department responsible for the disposition of the correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-009

SYSTEM NAME:

Civil Rights Division Travel Reports.

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed travel authorization forms or travel voucher forms for official travel on behalf of CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning travel expenditures which were recorded on travel authorization forms (Forms OBD-1 and DOJ-501) and travel voucher forms (Forms OBD-157 and SF-1012) by CRT employees or other persons authorized to travel for CRT and submitted to the Budget and Finance Branch of CRT from fiscal Year 1972 to the present. The computerized data covers fiscal years 1972 through 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to make periodic and special reports to the Administrative Management Section, CRT, and to the Budget and Finance

Branch, CRT, for use in controlling and reviewing CRT expenditures. Copies of individual's reports may be disclosed to the individual when appropriate forms are not submitted following a return from travel status.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject to CRT records.

Release of information to the National Archives and Records Administration [(NARA)] and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored on magnetic tape and on computer punch cards, on monthly and periodic and special reports printed on computer. Individual vouchers and travel

authorization forms are stored in file jackets.

RETRIEVABILITY:

Records in this system are retrieved by the names of those individuals identified under the caption "Categories of individuals covered by the system."

SAFEGUARDS:

Information in the system is unclassified. However, the records are protected in accordance with applicable Department security regulations for systems of records. Records are stored in locked cabinets and access to the computer is limited to those personnel who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When not longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition will be in accordance with records retirement or destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administrative Management Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Requests by former employees for access to records in this system may be made in writing with the envelope and letter clearly marked "Privacy Act Request". The request should clearly state the dates on which official travel was taken. The requestor should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager. Present employees may request access by contacting the System Manager directly.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information are CRT employees and other authorized persons who file travel authorization and travel voucher forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-010

SYSTEM NAME:

Freedom of Information: Privacy Acts Records.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue, N.W., Washington, DC 20530 and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act; persons who request access to or correction of records pertaining to themselves contained in CRT systems of records pursuant to the Privacy Act; and where applicable, persons about whom records have been requested or about whom information is contained in requested records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of all Freedom of Information/Privacy Acts (FOI/PA) requests received by CRT since January 1, 1975, copies of CRT responses to the requesters, internal memoranda and correspondence related to the requests, copies of the documents responsive to the requests, and records of appeals or litigation, and disclosure accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and is maintained to implement the provisions of 5 U.S.C. 552 and 552a and the provisions of 28 CFR 16.1 et seq. and 28 CFR 16.40 et seq.

PURPOSE OF THE SYSTEM:

The FOI/PA Branch of CRT is the designated unit to receive, process and respond to CRT FOI/PA requests. The purpose of the system is to enable the unit to perform its various receipt and response functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a routine use of such record as follows: (1) A record may

be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction; (2) A record may be disseminated to any appropriate Federal, State, local, or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records contained in systems of records maintained by CRT; (3) A record may be disseminated by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties; (4) a record relating to this system, or any facts derived therefrom, may be disseminated in proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation; and (5) a record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of Information to the National Archives and Records Administration:

(NARA) AND TO THE GENERAL SERVICES AND ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to

NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record contained in this system is stored manually in alphabetical order in file folders in a storage facility; abbreviated or summarized information is stored on manual index cards; in chronological, cumulative, notebooks; on disks in automated office equipment; and on magnetic disks and tapes.

RETRIEVABILITY:

A record is retrieved by the name of the individual or person making a request for access or correction of records.

Summary data on requests received through 1986, and part of 1987, is retrieved from the manual index cards, and from chronological cumulative notebooks; summary data as of the 1987 implementation of the computer system is retrieved from magnetic disks and tapes. Summary data consists of such data elements as name of requester, date and subject of request, response date, a summary of the response letter, case number, and date appealed, if applicable.

SAFEGUARDS:

Access to records is limited to personnel of the FOI/PA Branch of CRT and known Department of Justice personnel who have a need for the record in the performance of their duties.

Records in manual and computer form are a safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of FOI/PA Branch staff who are assigned specific identification codes will be able to use the computer and to access the stored information. All records in the system are protected by locks on the storage facility, the computer, and the room that contains the records.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule 14, items 16, 17, 18 and items 25, 26, 27 and 28.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Parts of this system are exempted from this requirement under 5 U.S.C.

552a(j)(2) or (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURE:

Parts of this system are exempted from this requirement under 5 U.S.C.

552a(j)(2) or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at this time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and letter clearly marked.

"Privacy Access Request". Include in the request the name of the individual involved, his birth date and place, or any other information which is known and may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals and persons making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in CRT.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in the system pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3), (d), and (g) of 5 U.S.C. 552a; in addition, certain categories of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsection (c)(3), and (d) of 5 U.S.C. 552a. These exemptions apply only to the extent the records contained in the system reflect investigatory law enforcement information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the United States Federal Register.

JUSTICE-EOIR-001

SYSTEM NAME:

Records and Management Information System (JUSTICE/EOIR-001).

SYSTEM LOCATION:

Executive Office for Immigration Review, Department of Justice, 5205 Leesburg Pike, Suite 800, Falls Church, Virginia 22041. The system is also located in EOIR field offices (see appendix identified as JUSTICE/EOIR-999)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains case-related information pertaining to aliens and alleged aliens brought into the immigration hearing process, including certain aliens previously or subsequently admitted for lawful permanent residence.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the name, file number, address and nationality of aliens and alleged aliens, decision memoranda, investigatory reports and materials compiled for the purpose of enforcing immigration laws, exhibits, transcripts, and other case-related papers concerning aliens, alleged aliens or lawful permanent residents brought into the administrative adjudication process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority granted the Attorney General, pursuant to 44 U.S.C. 3101 and 3103 and to fulfill the legislative mandate under 8 U.S.C. 1103, 1226 and 1252. Such authority has been delegated to EOIR by 8 CFR Part 3.

PURPOSE OF THE SYSTEM:

Information in this system serves as the official record of immigration proceedings. EOIR employees use the information to prepare, process and track the proceedings. The information is further used to generate statistical reports and various documents, i.e., hearing calendars and administrative orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disseminated to the Department of State; Federal courts; Members of Congress; the alien or alleged alien's representative or attorney of record; and, to Federal, State and local agencies. Information is disseminated to the Department of State, pursuant to 8 CFR 208.10(b), to

allow its preparation of advisory opinions regarding applications for political asylum; to the Federal courts to enable their review of EOIR administrative decisions on appeal; to Members of Congress to respond to constituent inquiries; and, to the representative or attorney of record to ensure fair representation. Finally, in any claim in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information, including investigatory information, may be disseminated to the appropriate Federal, State or local agency charged with the responsibility of investigating or prosecuting such violation or with enforcing or implementing such law.

Release of information to the news media and the public: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular matter would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in the system, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from the system of records may be disclosed to NARA and GSA for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in file cabinets. A subset of the records is maintained on fixed disks or removable disk packs which are stored in file cabinets. All records are stored in secured EOIR office space.

RETRIEVABILITY:

Manual records are indexed by alien file number. Automated records are retrievable by a variety of identifying data elements including, but not limited to, alien file number, alien name and nationality.

SAFEGUARDS:

Information maintained in the system is safeguarded in accordance with Department of Justice rules and procedures. Record files are maintained in file cabinets accessible only to EOIR employees. Automated information is stored on either fixed disks or removable disk packs which are stored in cabinets. Only EOIR employees in possession of specific access codes and passwords will be able to access automated information. All manual and automated records and mediums are located in EOIR office space accessible only to EOIR employees and locked during off-duty hours.

RETENTION AND DISPOSAL:

Record files are retained for six months after the final disposition of the case, then forwarded to regional Federal Records Centers. Automated records are maintained in EOIR field office data bases for ninety days after final disposition, then transferred to the host computer at EOIR headquarters and retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Counsel to the Director Executive Office of Immigration Review, Office of the Chief Immigration Judge, U.S. Department of Justice, 5203 Leesburg Pike, Suite 1609 Falls Church, Virginia 22041.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager listed above.

RECORD ACCESS PROCEDURE:

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 522a (k)(1) and (k)(2). Make all request for access to those portions not so exempted by writing to the system manager identified above. Clearly mark the envelop and letter "Privacy Access Requests"; provide the full name and notarized signature to the individual who is the subject of the record, his/her date and place of birth, or any other identifying number or information which may assist in locating the record; and, a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information maintained to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Department of Justice offices and employees, primarily those of the Immigration and Naturalization Service;

the Department of State and other Federal, State and local agencies; and the parties to immigration proceedings and their witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain records of this system from the access provisions of the Privacy Act (5 U.S.C. 552a(d)) pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). Rules have promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/EOIR-999

SYSTEM NAME:

Appendix to Executive Office for Immigration Review System of Records.

EOIR field offices are located as follows:

Executive Office for Immigration Review, Office of the Immigration Judge, 4420 N. Fairfax Drive, Room 414 Arlington, Virginia 22203

Executive Office for Immigration Review, Office of the Immigration Judge, Richard B. Russell Federal Building, 75 Spring Street, SW., Room 1310, Atlanta, Georgia 30303

Executive Office for Immigration Review, Office of the Immigration Judge, U.S. Appraisers Building 103 South Gay Street, Room 316 Baltimore, Maryland 21202

Executive Office for Immigration Review, Office of the Immigration Judge, John F. Kennedy Federal Building, Government Center, Room 510-A Boston, Massachusetts 02203

Executive Office for Immigration Review, Office of the Immigration Judge, 219 South Dearborn Street, Room 423, Chicago, Illinois 60604

Executive Office for Immigration Review, Office of the Immigration Judge, Federal Building, 1100 Commerce Street, Room 2C12 Dallas, Texas 75242

Executive Office for Immigration Review, Office of the Immigration Judge, Federal Office Building, 1961 Stout Street, Room 1708, Denver, Colorado 80202

Executive Office for Immigration Review, Office of the Immigration Judge, 511 East San Antonio, U.S. Courthouse, Room 509, El Paso, Texas 79901

El Paso Service Processing Center, 8915 Montana, El Paso, TX 79925

Executive Office for Immigration Review, Office of the Immigration Judge, 2320 La Branch Street, Room 2235, Houston, Texas 77004

Houston Detention Facility, 15850 Export Plaza Drive, Houston, TX 77032

Executive Office for Immigration Review, Office of the Immigration Judge, 300 North Los Angeles Street, Room 2001 Los Angeles, California 90012

Executive Office for Immigration Review, Office of the Immigration Judge, Interfirst Bank Tower, 222 East Van Buren, Harlingen, Texas 78550

Port Isabel Service Processing Center, Route 3, Box 1200, Building 37, Los Fresnos, TX 78566

Executive Office for Immigration Review, Office of the Immigration Judge, 7880 Biscayne Boulevard, 8th Floor, Miami, Florida 33138

Krome North Processing Center, Office of the Immigration Judge, Snapper Creek Station, Miami, Florida 33116

Executive Office for Immigration Review, Office of the Immigration Judge, Federal Building, 970 Broad Street, Room 308, Newark, New Jersey 07102

Executive Office for Immigration Review, Office of the Immigration Judge, 26 Federal Plaza, Room 13130, New York, New York 10278

Varick Street Service Processing Center, 201 Varick Street, Room 645, New York, New York 10014

Executive Office for Immigration Review, Office of the Immigration Judge, 211 Highway 165 South, Oakdale, Louisiana 71463

Executive Office for Immigration Review, Office of the Immigration Judge, Federal Building, Room 3114, 230 North First Avenue, Phoenix, Arizona 85025

INS Detention Camp, Highways 80 and 89, Florence, Arizona 85232

Executive Office for Immigration Review, Office of the Immigration Judge, 727 East Durango Boulevard, Room A-513, San Antonio, Texas 78206

Executive Office for Immigration Review, Office of the Immigration Judge, Samuel Fox Building, 950 Sixth Avenue, Suite 400 San Diego, California 92101

Office of the Immigration Judge, 1115 N. Imperial Avenue, First Floor, El Centro, California 92243

Executive Office for Immigration Review, Office of the Immigration Judge, 630 Sansome Street, Room 404, San Francisco, California 94111

Executive Office for Immigration Review, Office of the Immigration Judge, Key Tower Building, 1000 Second Avenue, Suite 3150 Seattle, Washington 98104

JUSTICE/INS-001

SYSTEM NAME:

The Immigration and Naturalization Service Index System, which consists of the following subsystems:

- A. Agency information control record index.
- B. Alien address reports index and records.
- C. Alien enemy index and records.
- D. Automobile decal parking identification system for employees.
- E. Centralized index and records (Master Index).
- F. Congressional Mail Unit Correspondence control index.
- G. Document vendors and alters index.
- H. Enforcement indexes.
- 1. Group one. (a) Contact index. (b) Information index. (c) Antismuggling index (general). (d) Criminal, narcotic,

and subversive index. (e) Suspect third party index.

2. Group two. (a) Air detail office index. (b) Anti-smuggling information centers, Canadian and Mexican borders.

(c) Border Patrol Academy index. (d) Boarder Patrol sectors general index. (e) Fraudulent Document Center index.

3. Enforcement correspondence control index.

I. Examinations indexes.

1. Application and petition system.

2. Correspondence control index.

3. Service lookout system.

J. Extension training program enrollees.

K. Finance Section indexes.

1. Accounts with creditors.

2. Accounts with debtors.

L. Freedom of Information correspondence control index.

M. Intelligence indexes.

N. Microfilmed manifest records.

O. Naturalization and citizenship indexes.

1. Naturalization and citizenship

docket cards.

2. Examiners docket lists of

petitioners for naturalization.

3. Master docket list of petitions for

naturalization pending one year or more.

P. Office of Professional Responsibility investigations index and records.

Q. Property issued to employees.

R. Security access clearance index.

S. White House and Attorney General

correspondence control index.

T. Health record system.

U. Personal data card system.

V. Compassionate cases system.

W. Emergency reassignment index.

X. Alien documentation, identification

and telecommunications (ADIT) system.

SYSTEM LOCATIONS:

A. Central Office: 425 Eye Street, NW., Washington, DC 20536.

B. Regional Offices: (1) Burlington, Vt.; (2) Fort Snelling, Twin Cities, Minn.; (3) Dallas, Tex.; (4) Laguna Niguel, Calif.

C. District offices in the United States;

(1) Anchorage, Alaska; (2) Atlanta, Ga.;

(3) Baltimore, Md.; (4) Boston, Mass.; (5)

Buffalo, N.Y.; (6) Chicago, Ill.; (7)

Cleveland, Ohio; (8) Dallas, Tex.; (9)

Denver, Colo.; (10) Detroit, Mich.; (11) El

Paso, Tex.; (12) Hartford, Conn.; (13)

Helena, Mont.; (14) Honolulu, Hawaii;

(15) Houston, Tex.; (16) Kansas City,

Mo.; (17) Los Angeles, Calif.; (18) Miami,

Fla.; (19) Newark, N.J.; (20) New

Orleans, La.; (21) New York, N.Y.; (22)

Omaha, Nebr.; (23) Philadelphia, Pa.;

(24) Phoenix, Ariz.; (25) Portland, Maine;

(26) Portland, Oreg.; (27) St. Albans, Vt.;

(28) St. Paul, Minn.; (29) San Antonio,

Tex.; (30) San Diego, Calif.; (31) San

Francisco, Calif.; (32) San Juan, P.R.; (33) Seattle, Wash.; (34) Arlington, Va.

D. District offices in foreign countries: (1) Hong Kong, B.C.C.; (2) Mexico City, Mexico; (3) Rome, Italy.

E. Sub-offices: (1) Agana, Guam; (2)

Albany, N.Y.; (3) Cincinnati, Ohio; (4)

Indianapolis, Ind.; (5) Harlingen, Tex.;

(6) Las Vegas, Nev.; (7) Louisville, Ky.;

(8) Memphis, Tenn.; (9) Milwaukee,

Wis.; (10) Norfolk, Va.; (11) Oklahoma

City, Okla.; (12) Pittsburgh, Pa.; (13)

Providence, R.I.; (14) Reno, Nev.; (15) St.

Louis, Mo.; (16) Salt Lake City, Utah; (17)

Spokane, Wash.

F. Border Patrol Sector

Headquarters: (1) Blaine, Wash.; (2)

Buffalo, N.Y.; (3) Chula Vista, Calif.; (4)

Del Rio, Tex.; (5) Detroit, Mich.; (6) El

Centro, Calif.; (7) El Paso, Tex.; (8)

Grand Forks, N. Dak.; (9) Havre, Mont.;

(10) Houlton, Maine; (11) Laredo, Tex.;

(12) Livermore, Calif.; (13) Marfa, Tex.;

(14) McAllen, Tex.; (15) Miami, Fla.; (16)

New Orleans, La.; (17) Ogdensburg,

N.Y.; (18) Spokane, Wash.; (19) Swanton,

Vt.; (20) Tucson, Ariz.; (21) Yuma, Ariz.

G. Border Patrol Academy, Los

Fresnos, Tex.; Federal Law Enforcement

Training Center (FLETC), Glynco, Ga.

H. Charlotte Amalie, St. Thomas, V.I.

I. Sub-offices in foreign countries: (1)

Athens, Greece; (2) Frankfurt, Germany;

(3) Naples, Italy; (4) Palermo, Italy; (5A)

Rome, Italy; (6) Tokyo, Japan; (7)

Vienna, Austria.

J. El Paso Intelligence Center (EPIC),

El Paso, Tex.

Addresses of offices are listed in the

telephone directories of the respective

cities listed above under the heading

"United States Government,

Immigration and Naturalization

Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Agency information control record index (Location A, supra). Individuals named or referenced in documents classified for national security reasons.

B. Alien address reports index and records (Location A, supra). Aliens required to report addresses.

C. Alien enemy index and records (Location A, supra).

1. Alien enemies who were interned during World War II.

2. Americans of Japanese ancestry (Nisei) who returned to Japan and, during World War II, either accepted employment by the Japanese Government or became naturalized in Japan.

D. Automobile decal parking identification for employees (Location B-3, supra). Current INS employees who

have the privilege of parking their cars on government premises.

E. Centralized index and records (Master Index) (Locations A, C, D, E, and I, supra).

1. Individuals covered by provisions of the immigration and nationality laws of the United States.

2. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive orders, and Presidential proclamations administered by the Immigration and Naturalization Service, and witnesses and informants having knowledge of such violations.

F. Congressional Mail Unit correspondence control index (Location A, supra).

1. Individuals named in correspondence received, including INS employees and past employees; Federal, State, and local officials; and members of the general public.

2. Individuals named in reports or correspondence received, as individuals investigated in the past or under active investigation, or suspected of violations of the criminal or civil provisions of statutes enforced by INS, including Presidential proclamations and Executive orders relating thereto, and witnesses and informants having knowledge of violations.

G. Document vendors and alterers index (Location B-4; duplicates in several INS offices in the Western and Southern regions). Individuals who are alleged immigration law violators involved in the supply of fraudulent documents.

H. Enforcement indexes.

1. Group one (Locations A, B, C, and E supra); (a) Contact index; (b) Informant index; (c) Anti-smuggling index (general); (d) Criminal, immoral, narcotic, racketeer and subversive indexes; (e) Suspect third party index.

1. Individuals who are in a position to know, learn of, and assist in locating aliens illegally in the United States; (2) individuals who have significant knowledge of foreign or domestic organizations subversive in nature and are willing to appear as Government witnesses or cooperate with INS on a continuing basis; (3) individuals who are known or suspected of being professional arrangers, transporters, harborers, and smugglers of aliens; who operate or conspire to operate with others to facilitate the surreptitious entry of an alien over a coastal or land border of the United States; and witnesses having knowledge of such matters; (4) individuals who are known or suspected of being habitual or notorious criminals, immoral, narcotic

violators or racketeers, or subversive functionaries or leaders; (5) individuals who are known or believed to be engaged in fraud operations involving the preparation and submission of visa petitions and other applications for benefits administered by INS; or the preparation and submission of applications for immigrant visas and/or Department of Labor certifications, or the filing of false United States birth registrations for alien children to enable them to pose as citizens or to enable parents who are immigrant visa applicants to evade the labor certification requirement.

2. Group two. (a) Air detail office index (Location J, supra). Individuals who are pilots and/or owners of private aircraft flying between the United States and foreign countries; individuals who engage in or are suspected of being engaged in illegal activity such as alien smuggling or entry without inspection.

(b) Anti-smuggling information centers, Canadian and Mexican borders (Locations: northern border, F-19, supra; southern border, J, supra). Individuals who are known or suspected of being smugglers or transporters of illegal aliens.

(c) Border Patrol Academy index (Location G, supra). Students or former students at the Border Patrol Academy; INS officers attending advanced training classes at the Academy or the Federal Law Enforcement Training Center (FLETC).

(d) Border Patrol sectors general index (Location F, supra). Past or present INS employees; individuals who are law violators, witnesses, contacts, informants, members of the general public, Federal, state, county, and local officials.

(e) Fraudulent Documents Center index (Location J, supra). Individuals who are members of the general public, notaries, public, state and local birth registration officials and employees, immigration law violators, vendors of documents, donors of documents, midwives, and witnesses. Also included in the system are names and information about fictitious persons used by counterfeiters or alterers of citizenship documents.

3. Enforcement correspondence control index (Location A, supra). (a) Individuals named in correspondence received, including employees, past employees, and others; (b) individuals named in documents, reports, or correspondence as individuals under current or past investigation, suspended of violation of the criminal or civil provisions of the statutes enforced by INS, including Executive orders and Presidential proclamations, and

witnesses and informants having knowledge of violations.

I. Examinations indexes (Location A, supra; duplicates in some local offices):

1. Application and petition index: individuals who have filed or assisted in filing petitions to classify aliens for the issuance of immigrant visas.

2. Correspondence control index: members of the general public.

3. Service lookout system: violators or suspected violators of the criminal or civil provisions of statutes enforced by INS.

J. Extension training program enrollees (Location A, supra). INS employees and other Federal agency employees enrolled in extension training program courses administered by INS.

K. Finance Section indexes (Locations A and B, supra): (1) Accounts with creditors; (2) Accounts with debtors.

(a) Individuals who are indebted to the United States Government for goods, services, or benefits or for administrative fines and assessments.

(b) Employees who have received travel advances or overpayments from the United States Government, who are in arrears in their accounts, or who are liable for damage to Government property.

(c) Vendors who have furnished supplies, material, equipment, and services to the Government.

(d) Employees, witnesses and special deportation attendants who have performed official travel.

(e) Employees and other individuals who have a valid claim against the Government.

L. Freedom of Information correspondence control index (Locations A, B, C, D, E, F, G, H, and I, supra). Individuals who request access to or copies of records maintained by INS, under the provisions of the Freedom of Information Act (5 U.S.C. 522).

M. Intelligence indexes (Locations A and B, supra). Individuals who have or are suspected of having violated the criminal or civil provisions of the statutes enforced by INS.

N. Microfilmed manifest records (Locations A, C-28, C-10, C-20, and C-29, supra). Individuals who have arrived or departed by aircraft or vessel at a United States port.

O. Naturalization and citizenship indexes (Locations C and E, supra, except E-6, E-7, E-8, and E-13).

1. Naturalization and citizenship docket cards. Individuals seeking benefits under Title III of the Immigration and Nationality Act of 1958, as amended.

2. Examiners docket lists of petitioners for naturalization. Petitioners

for naturalization and their beneficiaries.

3. Master docket list of petitioners for naturalization pending one year or more. Petitioners for naturalization and their beneficiaries.

P. Office of Professional Responsibility investigations index and records (Location A, B, C, D, E, F, G, H, I, and J supra). (1) INS employees who are the subjects of complainants directed to, or inquiries or investigations conducted by, the Office of Professional Responsibility; (2) individuals (complainants) who write to the Office of Professional Responsibility; (3) individuals (complainants) who write to the Commissioner or Regional Commissioners or other officials of INS and whose correspondence is referred to the Office of Professional Responsibility; (4) employees of agencies of the Federal Government, other than INS, about whom information indicating possible criminal or administrative misconduct has been developed during the course of routine investigation by components of the Department of Justice, when such information is furnished to the Office of Professional Responsibility for referral, if warranted, to an appropriate investigative component of the Department of Justice, or to another government agency.

Q. Property issued to employees (Locations A, B, C, E, and F, supra.) INS employees who have been issued property for use in performance of official duties.

R. Security access clearance index (Location A, supra). Current INS employees who have been cleared for access to documents and materials classified in the interest of national security.

S. White House and Attorney General correspondence control index (Location A, supra). Individuals named in or originating correspondence referred to INS by staff of the White House or Attorney General.

T. Health record system (Location A, supra). Persons at Location A who have requested health services or required emergency treatment.

U. Personal data card system (Locations A and B, supra). Employees and former employees of INS.

V. Compassionate cases system (Locations A and B, supra). INS employees who have requested transfers for personal reasons.

W. Emergency reassignment index (Locations B, C, E, and F, supra). INS employees who would be reassigned to other duty stations in case of emergency.

X. Alien documentation, identification, and telecommunications (ADIT) system (Location A, supra). Aliens lawfully admitted for permanent residence, commuters and other authorized frequent border crossings, and nonimmigrant persons other than transients.

Categories of records in the system: A. Agency information control record index. The system contains reference and locator data on the following kinds of documents:

1. Top secret and secret materials classified as national security information, including all copies prepared from controlled documents originated, received, or transmitted by INS officers.

2. Confidential material originated by other agencies and referred to INS, including all copies prepared from controlled documents.

3. All investigative reports, responses to security checks, and intelligence material received from sources within the Department of Justice and other Federal intelligence sources.

B. Alien address report index and records. This system contains an index and copies of Form I-53, Alien Address Report, required to be filed January 1 of each year by aliens in the United States.

C. Alien enemy index and records. This system contains a microfilm index and files containing various forms, reports, and other information.

D. Automobile decal parking identification system for employees. This system contains a list by number of each Department of Justice decal car sticker issued to local INS employees.

E. Centralized index and records (Master Index). The system consists of index records and related records and files containing various forms, applications and petitions for benefits under the immigration and nationality laws, reports of investigation, statements, reports, correspondence, and memorandums. Records which may be accessed electronically are limited to index and file locator data including name, identifying number, data and place of birth, date and port of entry, coded status transaction data, and location of relating records or files.

F. Congressional Mail Unit correspondence control index. This system contains a locator record for each report of piece of correspondence received, reflecting the name of the individual and the number of the subject filed in which specified information concerning the individual is maintained.

G. Document vendors and alters index. This system consists of "mug book" photos of alleged immigration law violators involved in the supply of

fraudulent documents, and data relating to the pictured violators including name, aliases, vital statistics, method of operation, list of convictions, present location, and source of material.

H. Enforcement indexes, 1. Group one, (a) Contact index; (b) Informant index; (c) Antismuggling index (general); (d) Criminal, immoral, narcotic, racketeer and subversive indexes; (e) Suspect third party index. These systems of records are maintained on Form G-598, Contract Record: Form G-169, Informant Record: Form G-170, Smuggler Information Index Card: and other index cards containing reference and file locator data on the individuals, including in some cases biographic data, address, and a brief description of activities.

2. Group two, (a) Air detail office index. The primary record in the system is Form I-92A, Report of Private Aircraft Arrival, which is executed by the inspecting official upon arrival of a private aircraft from foreign territory. There are also index cards, forms, investigative reports, records, and correspondence on aircraft arrivals, failures to report for inspection, and known or suspected alien smuggling operations using aircraft and microfiche indexes containing names of owners of aircraft of United States registry.

(b) Anti-smuggling information centers. Canadian and Mexican borders. This system contains Form G-170, Smuggler Information Index Card, other index cards, and correspondence relating to anti-smuggling activities. These indexes are in loose leaf form and are distributed to Border Patrol offices in the border areas.

(c) Border Patrol Academy index. This system contains general information and correspondence regarding each students academic progress in training. The information is maintained on the following forms: SW-91, Probationary Achievement Report: SW 91A. Scholastic Grade Worksheet: SW-91B. IOBTC Achievement Report-Immigration Inspector: SW-91C IOBTC Achievement Report-Investigator: SW-96, Class Rating Form: SW-123, Training Data: SW-282, Registration Information Form: SW-446, Conduct and Efficiency Report of Probationary Employee-5½ and 10 Months Exam Grades.

(d) Border Patrol sectors general index. This system contains indexes, forms, reports, and records relating to activities of the Border Patrol including Form I-14, Record or Apprehension of Seizure Form I-328, Prosecution Reports: Form I-263A and I-263B. Record of Sworn Statement: Form I-195, Criminal Prosecution Control Card: Form I-263W,

Record of Sworn Statement-Witness; Form I-236, Prosecution Reports; Form G-170, Smuggler Information Index Card; Form C-296, Report of Violation of Section 239, Immigration and Nationality Act; Form C-330, Notice of Action Information; Form C-445. Conduct and Efficiency Evaluation of Probationary Appointees; Form C-598, Contact Record. This system also contains copies of correspondence and memorandums between INS offices and outside agencies and individuals, as well as photographs of some violators of the immigration laws of individuals suspected of being involved in immigration law violations.

(e) Fraudulent Document Center index. This system contains birth certificates, baptismal certificates, and other identification documents used by aliens to support their fraudulent claims to United States citizenship. Most of the documents are genuine; however, there are also counterfeit and altered documents in the system. Also contained in the system are cross indexes, investigative reports, and records of individuals involved in fraud schemes or whose documents have been put to fraudulent usage.

3. Enforcement correspondence control index. This system contains reference and locator information on documents, reports, and correspondence received in the offices of the Associate Commissioner, Enforcement, Records are maintained on Form C-617, Correspondence Control Card, and Form CO-147, Call-up Index—Domestic Control.

1. Examinations indexes. 1. Application and petition systems. This system contains petitioners' names, date and place of birth, names of prior spouses, immigration "A" number if an alien, and date of marriage if married; beneficiary's names, date and place of birth, immigration "A" number if any, names of spouses, and nationality code, and the names, dates, and places of birth of any children: Name of the person administering the oath or preparing the form, if other than a Government employee.

2. Correspondence control index. This system contains reference and locator information on documents, reports and correspondence received in the office of the Associate Commissioner, Examinations. Records are maintained on Form C-617, Correspondence Control Card.

3. Service lookout system. This system contains names and reference data on violators, alleged violators, and suspected violators of the criminal or civil provisions of the statutes enforced by INS.

J. Extension training program enrollees. This system contains correspondence and records of each enrollee's test scores; dates of actions such as mailing of lesson materials, test results, and certificates of completion; and dates of receipt of tests.

K. Finance Section indexes. 1. Accounts with creditors. Records are vendors' invoices, purchase orders, travel vouchers, and claims filed by appropriation for the fiscal year from which payment is chargeable.

2. Accounts with debtors. Records consist of bill for inspection services performed under the Act of March 2, 1931; fees, fines, penalties, and deportation expenses assessed pursuant to the Immigration and Nationality Act; and employee indebtedness for travel advances, for the unofficial use of Government facilities and services, for damage to or loss of Government property, and for erroneous or overpayment of compensation for travel expenses.

L. Freedom of Information correspondence control index. Records are kept on Form C-617. Correspondence Control Card, and include reference and locator information on each request for information received under the Freedom of Information Act.

M. Intelligence indexes. Records include reference and locator information on documents, reports, bulletins, and correspondence: Records are categorized by name, violation, and activity.

N. Microfilmed manifest records. The system contains microfilmed indexes and arrival and departure manifests with brief biographical data and facts of arrival and departure. Arrival records for certain ports date from 1891, and departure records date from 1900. Records are not complete, as some records were destroyed and not microfilmed.

O. Naturalization and citizenship indexes. 1. Naturalization and citizenship docket cards. Docket cards are 3x5 or 5x8 index cards for each applicant, beneficiary, or petitioner, recording type of application, date of receipt, file and/or petition number, court number where petition for naturalization was filed, and reference number of the individual's case file.

2. Examiners' docket lists of petitioners for naturalization. Records are maintained on Form N-476, Examiner's Docket List, and record court of naturalization jurisdiction, petition number, petition filing date, court number, name of petitioner, name of beneficiary, proposed recommendation by the naturalization examiner, reasons

of continuance, and reference number of the individual's case file.

3. Master docket lists of petitions for naturalization pending one year or more. Records are maintained on Form N-476. Examiner's Docket List, and contain reference and locator information on petitions pending for one year or longer.

P. Office of Professional Responsibility investigations index and records. This system of records consists of complaints filed against INS employees, the results of investigations into those complaints, and actions taken after completion of the investigations. This system also includes all records developed pursuant to special assignments given to the Office of Professional Responsibility by the Commissioner or Regional Commissioners as well as records containing information indicating possible misconduct by employees of the Federal Government, other than the INS, which have been furnished to the Office of Professional Responsibility for referral, if warranted, to the appropriate investigative authority.

Q. Property issued to employees. Records are maintained on Form G-570, Record-Receipt—Property Issued to Employees, which lists name, description of property, serial number, dates issued and returned, employee's initials, and supervisor's initials.

R. Security access clearance index. Records are kept on 3X5 index cards listing employee's name, dated when clearances were granted, and levels of clearance. Related records and reports are maintained by the Office of Management and Finance, Department of Justice.

S. White House and Attorney General correspondence control index. Records are maintained on Form G-617. Correspondence Control Card, and contain reference and locator information on correspondence addressed to the President and the Attorney General which has been referred to INS for appropriate attention.

T. Health record system. Records are kept on 5X7 index cards listing name, date, and treatment given.

U. Personal data card system. Records are kept on Form G-74, Personal Data Card, for each employee or former employee. Information includes name, date of birth, height, weight, sex, blood type, photograph, and color of hair and eyes.

V. Compassionate cases system. Records are kept on 3X5 index cards containing employees' name, position, grade, present location, date of request, date circulated to committee,

disposition, and (when applicable) new location of employee. Relating records include the employee's request: Form G-410, Employee Qualification-Skills Inventory; local and regional recommendations, medical statements (where applicable), records of committee actions, and response to employee.

W. Emergency reassignment index. Records are kept on Form G-560, Emergency Activity Project Assignment. Information includes name, age, grade, title, official station, residence, telephone number, and emergency assignment activity.

X. Alien documentation, identification and telecommunications (ADIT) system. Records consist of formatted data base records of personal and biographical information such as name, date of birth, picture and fingerprint coordinates, height, mother's first name, father's first name, city/town/village of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

A. General, applicable to all Service index system, includes but is not limited to: Sections 103, 265 and 290 and Title III of the Immigration and Nationality Act, hereinafter referred to as the Act (66 Stat. 163), as amended (8 U.S.C. 1103; 8 U.S.C. 135; 8 U.S.C. 1360), and the regulations pursuant thereto.

B. Specific, applicable to some of the indexes, including but not limited to:

1. Executive Order 11652, and 28 CFR 17.79-Agency control information record index, and Access clearance information system.

2. 31 U.S.C. 66a—Finance Section indexes.

3 Title III of the Act, as amended (8 U.S.C. section 1401 through 1503), and the regulations promulgated thereunder—Naturalizations and citizenship indexes.

4. Sections 235 and 287 of the Act, as amended (8 U.S.C. 1225; and 8 U.S.C. 1357), and the regulations promulgated pursuant thereto—Personnel investigations.

5. Section 231 of the Act, as amended (8 U.S.C. 1221)—Micro-filmed manifest records.

6. 40 U.S.C. 483—Property management system.

7. 5 U.S.C. 4113—Extension training program.

8. 5 U.S.C. 552. The Freedom of Information Act requires certain record keeping; this system was established and is maintained in order to enable INS to comply with this requirement.

9. 5 U.S.C. 301—Health Record System. Personal Data Card System, and Compassionate Cases System.

10. Executive Order 11490—Emergency Reassignment Index.

11. Section 204, 214, and 290 of the Act, as amended (8 U.S.C. 1254, 1184, 1360)—Application and petition system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records is used to serve the public by providing data for responses, when authorized, to written inquiries, complaints and so forth. It is also used to administer the management, operational, and enforcement activities of the Service. The records are used by officers and employees of the Service and the Department of Justice in the administration and enforcement of the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and for referrals for prosecution. Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Laws, Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. To other federal, state, and local government law enforcement and regulatory agencies, foreign governments, the Department of Defense, including all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, INTERPOL and individuals and organizations during the course of investigation in the processing of a matter or a proceeding within the purview of the immigration and nationality laws, to elicit information required by the Service to carry out its functions and statutory mandates.

D. *Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in nature) to the appropriate agency, (whether federal state, local or foreign) charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, rule,*

regulation or order issued pursuant thereto.

E. *Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general status within Service jurisdiction, or by regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal and to opposing counsel in the course of discovery.*

F. To a federal, state, local or foreign government agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G. To a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses. If necessary to obtain information relevant to a decision of this Service concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license grant or other benefit.

H. *Where there is an indication of a violation or potential violation of the laws of another nation. (whether civil or criminal) to the appropriate foreign government agency charged with enforcement or implementing such laws: to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.*

I. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

J. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

K. To an applicant, petitioner or respondent or to his or her attorney or representative (as defined in 8 CFR 1.1(j)) in connection with any proceeding before the Service.

L. To a federal, state, local or foreign government agency on a discretionary and/or reciprocal basis in response to its request, to assist in the collection or repayment of loans and fraudulently-secured benefits or grants.

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular

case would constitute an unwarranted invasion of personal privacy.

N. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

O. *To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally, index records and cards are stored in manually operated index machines, file drawers, and boxes; other information is stored manually as paper records in file folders at location B, C, E, F, and H, *supra*. Inactive files are stored at Federal Records Centers. Exceptions are as follows:

A. Alien address report index and records: Forms I-53, Alien Address Report, are microfilmed in the order in which they are received. An index is maintained on microfiche and on computer-readable magnetic tape.

B. Alien documentation, identification, and telecommunications (ADIT) system information is stored on magnetic tape and disks. Original forms completed by the individuals are filed with other records described for the subsystem "Centralized index and records."

C. Alien enemy index: Index records are maintained on microfilm. Actual files are stored in Federal Records Centers.

D. Centralized index and records: Most records are paper documents stored in file folders. Those index records which can be accessed electronically are stored on magnetic disk and tape.

E. Enforcement indexes: Original index cards and records are stored in manually operated file drawers and machines. Some records are also maintained in the automated system published in a notice entitled "JUSTICE/DEA-INS-111, Automated Intelligence Records Systems (Pathfinder)."

F. Examinations indexes: (1) Application and petition system records are stored on magnetic media at the Department of Justice Data Management Service. Original paper forms completed by the individuals are filed with other records in the subsystem called "Centralized index and records" (2) Service lookout system records are maintained on magnetic tape and in

printed looseleaf reference books at ports of entry.

RETRIEVABILITY:

Generally, records are indexed and retrievable by name and/or "A" or "C" file number. Exceptions are as follows:

A. Air detail office index system: Aircraft data is filed in-numerical sequence, within each calendar year.

B. Intelligence indexes: Records are retrieved by name within organization, activity, or type of violation.

C. Examiners' docket lists of petitioners for naturalization, and Master Docket lists of petitions for naturalization pending one year or more, are filed chronologically for each court exercising naturalization jurisdiction. Relating records are filed by petition number.

Access controls: Records are safeguarded in accordance with Department of Justice rules and procedures. INS officers are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked outside of normal office hours. Many records are stored in cabinets or machines which are locked outside of normal office hours. Access to automated system is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Several general rules apply to many subsystems of records:

A. Alien registration records are retained for 100 years from the closing date or date of last actions.

B. Correspondence control cards (forms G-617) are normally retained for one year following the year in which created.

C. Correspondence portions of subject files are normally retained no longer than two years. Records are then either microfilmed or destroyed by burning.

D. Records in policy portions of subject files are retained indefinitely.

E. Indexes and records not specifically mentioned are retained only so long as they serve a useful purpose.

F. Records are destroyed by shredding, burning, or as provided in disposal schedules.

Exceptions to the general practices are as follows:

A. Alien documentation, identification, and telecommunications (ADIT) system records are maintained until naturalization, death, or other material change in status of the individual, or until the registration card is relinquished.

B. Air detail office index: Forms I-92A are retained for five years.

C. Border Patrol trainee examination papers are destroyed six months after the trainee officer completes his probationary year.

D. Centralized index records stored on magnetic disk and tape are updated periodically and maintained for the life of the relating record. Original index cards are microfilmed, then destroyed.

E. Compassionate cases system records are retained for three years after completion of action.

F. Congressional Mail Unit correspondence control index records are retained for three years.

G. Emergency reassignment index records are destroyed upon the transfer, separation, retirement, or death of the employee.

H. Enforcement indexes relating to law violators and witnesses are retained for three years. Routine investigations records are destroyed when the investigation is closed. Correspondence control records are destroyed after final action on the subject matter.

I. Examinations indexes: (1) Application and petition system records are deleted from the automated data base five years after the date of the last activity. Inactive records will be stored on magnetic tape for an additional five years. (2) Service lookout system records are deleted five years after insertion, unless removed at an earlier date or reinserted by the listing agency.

J. Finance Section indexes; accounts with creditors and debtors are retained for two years, from the close of the fiscal year to which they relate and then are transferred to Federal Records Centers for storage and disposition.

K. Freedom of Information correspondence control index cards and records of requests under appeal or litigation are retained for six years after date of final action.

L. Health records are retained for six years after the date of the last entry.

M. Intelligence indexes: records are maintained indefinitely.

N. Naturalization examiners, docket lists and master docket lists are retained for two years. Naturalization and citizenship docket cards are purged after applications are rejected, closed, granted, or denied, or petitions for naturalization are granted, denied, or nonfiled.

O. Microfilmed manifest records are retained permanently.

P. Personal data cards are retained for three years after the employee is separated (Location A. *supra*). In regional offices (Location B. *supra*),

records are destroyed after the employee is separated.

Q. Personnel investigations records are destroyed at the close of the fiscal year following the year of investigation. However, Operation Clean Sweep records are being retained until the program is terminated. Records of criminal investigation are retained as long as the information serves a useful purpose.

R. Security access clearance index records are destroyed upon the separation, death, or retirement of the employee.

S. White House and Attorney General correspondence control index cards are retained for one year beyond the expiration of the term of the President.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager, Servicewise, is the Associate Commissioner, Information Systems (Location A, supra).

B. The Associate Commissioner, Information Systems, is the sole manager of the following subsystems:

1. Agency information control record index.
2. Alien address reports index and records.
3. Alien documentation, identification and telecommunications (ADIT) system.
4. Alien enemy index.
5. Centralized index and records (Master Index).
6. Congressional Mail Unit correspondence control index.
7. Document vendors and alterers index.
8. Enforcement correspondence control index.
9. Examinations indexes: (1) Application and petition system; (2) Correspondence control index; (3) Service lookout system.
10. Finance Section indexes.
11. Freedom of Information correspondence control index
12. Health record system.
13. Intelligence indexes.
14. Microfilmed manifest records.
15. Property issued to employees.
16. Security access clearance index.
17. White House and Attorney General correspondence control index.

C. The following officials are system managers for special subsystems:

1. Automobile decal parking identification for employees: Deputy Regional Commissioner (Location B-4, supra).
2. Enforcement indexes, group one (Contact index; informant index; Antismuggling index (general); Criminal, immoral, narcotic, racketeer and subversive indexes; Suspect third party index); the ranking Service officer of the

offices in which the indexes are maintained (Locations A, B, C, and E, supra).

3. Enforcement indexes, group two: (a) Air detail office index: Deputy Director (Location J, supra). (b) Antismuggling information centers: (1) Canadian border, Chief Patrol Agent (Location F-19, supra); (2) Mexican Border, Deputy Director (Location J, supra). (c) Border Patrol Academy index: Chief Patrol Agent (Locations G, supra), (d) Border Patrol sectors general index; Chief Patrol Agent (Location F, supra), (e) Fraudulent Document Center index (Location J, supra).

4. Compassionate cases system: Associate Commissioner, Information Systems. (Location A, supra); Regional Commissioners (Location B, supra).

5. Emergency reassignment index: Regional Commissioners (Location B, supra); District Directors (Location C, supra); Officers in charge (Location E, supra); Chief Patrol Agents (Location F, supra).

6. Extension training program enrollees: Chief, Employee Development Branch, Office of Assistant Commissioner, Personnel (Location A, supra).

7. Naturalization and citizenship indexes: (a) Naturalization and citizenship docket cards, and Examiners' docket lists of petitioners for naturalization: District Directors (Location C, supra); Officers in Charge (Location E, supra, except E-6, E-7, E-8, and E-13). (b) Master docket lists of petitions for naturalization pending one year or more: The Associate Commissioner, Information Systems (Location A, supra); Regional Commissioners (Location B, supra); District Directors (Location C, supra); Officers in charge (Location E, supra, except E-6, E-7, E-8, and E-13).

8. Personnel data card system: Associate Commissioner, Information Systems (Location A, supra); Regional Commissioners (Location B, supra).

NOTIFICATION PROCEDURE:

A. Inquiries should be addressed to the FOIA/PA Officer at the INS office where the record is maintained or (if unknown) to the FOIA/PA Officer, INS, 425 I Street NW, Washington, D.C. 20536.

B. Systems totally exempt from disclosure pursuant to 5 U.S.C. 532a (j) and (k) listed below:

1. Agency information and control record index.
2. Document vendors and alterers index.
3. Emergency reassignment index.
4. Enforcement indexes, group one: (a) Contact index, (b) Informant index, (c)

Anti-smuggling index (general), (d) Criminal, immoral, narcotic, racketeer, and subversive indexes, (e) Suspect third party index.

5. Enforcement indexes, group two: Anti-smuggling information centers, Canadian and Mexican borders.

6. Examinations indexes; Service lookout system.

7. Intelligence indexes.

RECORD ACCESS PROCEDURE:

In all cases, requests for access to a record from any record subsystem shall be in writing by mail or in person. If a request for access is made in writing, the envelope and letter shall be clearly marked "Privacy Access Request." The requester shall include a description of the general subject matter and if known, the relating file number. To identify a record relating to an individual, the requester should provide the individual's full name; date and place of birth; alien, citizen, and, if appropriate, the date and place of entry into or departure from the United States. The requester shall also provide a return address for transmitting the information.

Most of the subsystems of records contain information which the Attorney General has exempted from disclosure pursuant to 5 U.S.C. 552a(j) and (k), and records which are classified pursuant to Executive order. Each requester will be accorded access to the records relating to himself only to the extent that such records are not within the scope of exemptions and are not classified.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the INS office that maintains his record or if not known to the FOIA/PA Officer, INS, 425 I Street, NW, Washington, D.C. 20536 or to the office in which he believes a record concerning him may exist. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

Record source categories: Basic information contained in INS records is supplied by individuals on Department of State and INS applications and reports. Other information comes from inquiries and/or complaints from members of the general public and members of the Congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports of investigation, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other government agencies.

including Federal, state, and local, and from various courts and regulatory agencies; information from foreign government agencies and international organizations; and personnel and administrative applications and forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e)(1), (2), and (3); (e)(4) (G), (H); (e)(5) and (8); and (g); of the Privacy Act. These exemptions apply to the extent that information in the subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c); and (e) and have been published in the *Federal Register* as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

JUSTICE/INTERPOL-001

SYSTEM NAME:

The INTERPOL-United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) INTERPOL-USNCB Records System.

SYSTEM LOCATION:

INTERPOL-U.S. National Central Bureau, Department of Justice, Room 800, Shoreham Bldg., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted or are subjects of a criminal investigation with international aspects; specific deceased persons in connection with death notices; individuals who may be associated with certain weapons, motor vehicles, artifacts, etc., stolen and/or involved in a crime; victims of criminal violations in the United States or abroad; and INTERPOL-USNCB personnel involved in litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The program records of the INTERPOL-USNCB consists of criminal and non-criminal case files. The files contain fingerprint records, photographs, criminal investigative reports, radio messages (international), teletype messages (internal U.S.), log sheets, computer printouts, letters, memoranda, and statements of witnesses and parties to litigation.

These records relate to fugitives, wanted persons, lookouts (temporary and permanent), specific missing persons, deceased persons in connection with death notices. Information about individuals includes names, alias, date of birth, address, physical description,

various identification numbers, reason for the record or lookout, and details and circumstances surrounding the actual or suspected violation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 263a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event a record(s) in this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use to the appropriate law enforcement and criminal justice agencies whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulations or order issued pursuant thereto. A record may be disclosed to federal, state or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license grant or other benefit; to federal agencies in response to their request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. A record may be disclosed to appropriate parties engaged in litigation or in preparation of possible litigation, e.g., to potential witnesses for the purpose of securing their testimony when necessary before courts, magistrates or administrative tribunals; to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings; to foreign governments in accordance with formal or informal international agreements; to local, state, federal and foreign agents; to the Treasury Enforcement Communications System

[TECS] (Treasury/CS 00.244); to the International Criminal Police Organization (INTERPOL) General Secretariat and National Central Bureaus in member countries; to the INTERPOL Supervisory Board, an international board comprised of three judges having oversight responsibilities regarding the purpose and scope of personal information maintained in the international archives of INTERPOL; to employees and officials of financial and commercial business firms and private individuals where such release is considered reasonably necessary to obtain information to further investigative efforts or to apprehend criminal offenders; to other third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and to translators of foreign languages as necessary. In addition, records are accessed by INTERPOL-USNCB employees and by volunteer students and students working under a college work-study program who have a need for the records in the performance of their duties.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information in behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in file folders and on microfilm in the INTERPOL-United States National Central Bureau. Magnetic disks in the INTERPOL Case Tracking System (CTS) are stored at the Justice Data Center, U.S. Department of Justice, and certain limited data, e.g., that which concerns fugitives and wanted persons, is stored in the Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244, a system published by the U.S. Department of the Treasury.

RETRIEVABILITY:

Information is retrieved primarily by name, file name, system identification number, personal identification number, and by weapon or motor vehicle number or by other identifying data. Prior to 1975, case files were arranged by name of subject. Between 1975 and 1979 case files were sequentially numbered. Since October 1979, files have been arranged by year, month and sequential number.

SAFEGUARDS:

Information maintained on magnetic disks is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Only those individuals specifically authorized and assigned an identification code by the system manager will have access to the computer. Identification codes will be assigned only to those INTERPOL-USNCB employees who require access to the information to perform their official duties. In addition, access to the information must be accompanied through a terminal which is located in the INTERPOL-USNCB office that is occupied twenty-four hours a day. Information in file folders and in microfilm records is stored in file cabinets in the same secured area.

RETENTION AND DISPOSAL:

Case files opened after April 5, 1982 have been stored on microfilm (41 CFR Sec. 101-11.506). In addition, records that were closed prior to April 5, 1982 but are recalled from the Federal Archives and Records Center (FARC) are also microfilmed.

Case files that were closed prior to April 5, 1982 are transferred to the FARC two years from the date the case is closed and are destroyed twenty years thereafter, if there has been no recall from the FARC and no case activity.

Case files closed as of April 5, 1982 and thereafter are disposed of as

follows: The hard copy (paper record) of the case file may be destroyed when the microfilm records have been verified for clearness, completeness and accuracy. The microfilm record of the case file is destroyed ten years after closing of the case, if there has been no case activity.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, INTERPOL-United States National Central Bureau, Department of Justice, Room 800, Shoreham Building, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Inquiries regarding whether the system contains a record pertaining to an individual may be addressed to the Chief, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530. To enable INTERPOL-USNCB personnel to determine whether the system contains a record relating to him or her, the requester must submit a written request identifying the record system, identifying the category and type of records sought, and providing the individual's full name and at least two items of secondary information (date of birth, social security number, employee identification number, or similar identifying information).

RECORD ACCESS PROCEDURE:

Although the Attorney General has exempted the system from the access, contest, and amendment provisions of the Privacy Act, some records may be available under the Freedom of Information Act. Inquiries should be addressed to the official designated under "Notification procedure" above. The letter should be clearly marked "Freedom of Information Request" and a return address provided for transmitting any information to the requester.

CONTESTING RECORD PROCEDURES:

See "Access procedures" above.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include investigating reports of federal, state, local, and foreign law enforcement agencies (including investigating reports from a system of records published by Department of Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244); other non-Department of Justice investigative agencies; client agencies of the Department of Justice; statements of witnesses and parties; and the work product of the staff of the United States National Central Bureau working on particular cases. Although the organization uses the name INTERPOL-USNCB for purposes of public recognition, the INTERPOL-USNCB is

not synonymous with the International Criminal Police Organization (ICPO-INTERPOL), which is a private, intergovernmental organization headquartered in St. Cloud, France. The Department of Justice INTERPOL-USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organization subunit of the International Criminal Police Organization. The records maintained by the INTERPOL-USNCB are separate and distinct from records maintained by the international Criminal Police Organization, and INTERPOL-USNCB does not have custody of, access to, nor control over the records of the International Criminal Police Organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e), (1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), and (g) if the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), and (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/OJP-004

SYSTEM NAME:

Grants Management Information System (PROFILE).

SYSTEM LOCATION:

Office of Justice Programs; 633 Indiana Avenue, N.W.; Washington, D.C. 20531

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Included are recipients (grantees) of OJP funds. These include grantees of the National Institute of Justice, the Bureau of Justice Statistics, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime, and the now defunct Office of Justice Assistance, Research, and Statistics, and the Law Enforcement Assistance Administration. Also included are project monitors and project directors of these grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grantee and Project Audit File, Financial and Programmatic Compliance Records of the Grantee, Grant Applications, and Grant/Contract Award Computer Data File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with U.S.C. 301, 44 U.S.C. 3101, and 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for the purpose of technical review and fiscal or program evaluation to experts in particular subject areas related to the substantive or fiscal components of the program.

Release of Information in an Adjudicative Proceeding:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

- i. The OJP, or any subdivision thereof, or
- ii. Any employee of the OJP in his or her official capacity, or
- iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or
- iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 522, may be disclosed as a routine use to a member of Congress or staff acting upon the member's behalf when the member or staff requests the information on behalf of and at the request of the individuals who are the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services

Administration (GSA). A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Information maintained in the system is stored on computer disc for use in a computer environment.

RETRIEVABILITY:

Data is retrievable by name of individual covered by the system.

SAFEGUARDS:

Information in the system is safeguarded and protected by computer password key. Direct access is limited to computer personnel.

RETENTION AND DISPOSAL:

Data is maintained for current fiscal year and previous fiscal years in master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller: Office of Justice Programs; 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Include in the request the name and grant/contract number. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are grantees, applicants for award, and OJP project monitors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-005**SYSTEM NAME:**

Financial Management System.

SYSTEM LOCATION:

Office of Justice Program (OJP); 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of OJP, OJARS, LEAA, NIL, BIS, and OJJDP funds; Employees.

This system contains information concerning (a) current and past recipients of OJP funds, including those from the National Institute of Justice, the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the now defunct Office of Justice Assistance, Research and Statistics, and Law Enforcement Assistance Administration; (b) OJP employees; and (c) all individuals on whom vouchers are submitted requesting payment for goods or services rendered (except payroll vouchers for Department of Justice employees), including vendors, contractors, travelers, and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee Travel files; time and attendance files: *Government Travel System and Government Charge Cards*; Government transportation Request; Paid Vendor Documents File, all vouchers processed, i.e., all documents required to reserve, obligate, process and effect collection or payment of funds. (Excluded from the system are payroll vouchers.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 3512, and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

After processing the vouchers, OJP and the Justice Management Division use the records to maintain individual financial accountability; to furnish statistical data (not identified by personal identifiers); to meet both internal and external audit and reporting requirements; and to provide Administrative Officers from the Offices, Boards, and Divisions and the OJP with information on vouchers by name and social security number for agency financial management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information in an adjudicative proceeding:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Service Administration (GSA). A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized discs, filed folders.

RETRIEVABILITY:

Name, social security numbers, digital identifiers assigned by accounting office.

SAFEGUARDS:

Information contained in the system is unclassified and maintained in accordance with OJP procedures. Manual information in the system is safeguarded in locked file cabinets. Operational access to information maintained on computer discs is controlled by password key. These keys are issued only to employees who have a need to know to perform job functions relating to financial management and accountability. Access to manual files is also limited to employees who have a need for the records in the performance of their official duties.

RETENTION AND DISPOSAL:

Employee travel files, time and attendance files and Government transportation files are closed at end of fiscal year, held three years thereafter.

Payment documents are retained for three fiscal years (current and two years). The payment documents and the aforementioned files are then shipped to a General Services Administration's Federal Records Center for storage and subsequent destruction in accordance with instructions of the General Accounting Office. Computerized discs are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller: Officer of Justice Programs; 633 Indiana Avenue, NW., Washington, DC 20531

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendments to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are the individuals to whom the information pertains.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-008

SYSTEM NAME:

Civil Rights Investigative System.

SYSTEM LOCATION:

Office of Justice Programs (OJP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affected by any OJP project for which the agency has compliance responsibility, including grantees, subgrantees, contractors, subcontractors, employees, and applicants, who have made complaints of discrimination. OJP includes the National Institute of Justice, the Bureau of Justice Statistics, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Also included are individuals who are the subjects of civil rights compliance records of the now defunct Office of Justice Assistance, Research, and Statistics, and the Law Enforcement Assistance Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civil Rights Complaint Control Files; Civil Rights Litigation Reference Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3789d, 42 U.S.C. 10604(e), 29 U.S.C. 794, 42 U.S.C. 2000d, 20 U.S.C. 1681, 42 U.S.C. 5601, and 42 U.S.C. 1601.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

OJP uses information in this system to investigate complaints and to obtain compliance with civil rights laws. Other such users of the information are appropriate State agencies, Civil Rights Division of the Justice Department, State Governors and Attorneys General, Office of Federal Contract Compliance, Equal Employment Opportunity Commission, Office of Federal Revenue Sharing, and the United States Commission on Civil Rights, Department of Health and Human Services, Department of Education and OJP. OJP may also use this information for agency project evaluation, technical assistance, and training.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived

therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND TO THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored in file folders and on index cards.

RETRIEVABILITY:

Information is retrieved by name of the individual or organization against whom the complaint is made.

Complaint case files are not retrievable by information identifiable to the individual complainant.

SAFEGUARDS:

Information is kept in locked file cabinets and combination safe. Access is limited to investigative personnel.

RETENTION AND DISPOSAL:

All investigative information is destroyed ten years after the investigation is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Civil Rights Compliance, Office of Justice Programs; 633 Indiana Avenue NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request for access to a record containing civil rights investigatory material shall be made in writing with the envelope and letter clearly marked "Privacy Access Request" to the Civil Rights System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The information contained in this system was received from individual complainants, witnesses, grant files, respondents, official State and Federal records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(K)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

JUSTICE/OJP-009

SYSTEM NAME:

Federal Advisory Committee Membership Files.

SYSTEM LOCATION:

Office of Justice Programs (OJP), 633 Indiana Avenue NW., Washington, DC, 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or are presently members of or are being considered for membership on advisory committees within the jurisdiction of the OJP.

OJP includes the former Office of Justice Assistance, Research, and Statistics, the former Law Enforcement Assistance Administration, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, documents relating to committee members, biographical data, and Committee membership forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act, 5 U.S.C. App. I et seq.; 5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Annual Report to the President; administrative reports to OMB and other federal agencies.

Release of information to the news media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA).

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of Information to Congress.

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in system is stored in file folders.

RETRIEVABILITY:

Information is retrieved by name of individual.

SAFEGUARDS:

Data is maintained in file cabinets. The entrance to the building requires building pass or security sign-in.

RETENTION AND DISPOSAL:

The data is placed in an inactive file upon discontinuance of membership, held for two years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Advisory Committee Officer; Office of General Counsel; Office of Justice Programs; 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are supplied directly by individuals about whom the record pertains, references, recommendations, program personnel, and biographical reference books.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OP-010**SYSTEM NAME:**

Technical Assistance Resource Files.

SYSTEM LOCATION:

Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants with expertise in criminal justice systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of résumés and other documents related to technical assistance requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained under authority of 44 U.S.C. 3101 and 42 U.S.C. 5614(b)(6).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used to determine the qualifications and availability of individuals for technical assistance assignments. Users are State Criminal Justice Councils, and the Office of Juvenile Justice and Delinquency Prevention.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND THE GENERAL SERVICES ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Information contained in the system is on hard copy and stored in file cabinets.

RETRIEVABILITY:

Information is manually retrieved by the name of the individual.

SAFEGUARDS:

Records are stored in file cabinets. Admittance to the building in which they are stored requires a building pass or an individual signature at the main entrance to the building.

RETENTION AND DISPOSAL:

Records are placed in an inactive file at the end of the fiscal year in which final use was made. They are held two years in the inactive file; then transferred to the Federal Records Center. Records are destroyed after six years.

SYSTEM MANAGER(S) AND ADDRESS:

Technical Assistance Coordinator; Division Director of Program area in which records are sought in the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, 633 Indiana Avenue NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager(s) at the above address.

RECORD ACCESS PROCEDURES:

A request for access to a record contained in this system shall be made in writing with the envelope and letter clearly marked "PRIVACY ACCESS REQUEST." Include in the request the name and grant/contract number for the record desired. Access requests will be directed to the system manager(s) listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager(s) listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are those individuals to whom the information pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-011**SYSTEM NAME:**

Registered Users File—National Criminal Justice Reference Service (NCJRS).

SYSTEM LOCATION:

National Criminal Justice Reference Service; 1600 Research Blvd., Rockville, MD 20850

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on those individuals engaged in criminal

justice activities, citizen groups and academicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides a record of registrants who request reference services and products from NCIRS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained and established in accordance with 42 U.S.C. 3721.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the system is used as a mailing list to supply registrants requesting services from NCJRS with information or products.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 29 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use of the National Archives and Records Administration and the General Services Administration in records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Information is stored on magnetic disc pack for use in a computer environment.

RETRIEVABILITY:

Information is retrieved by the name and user identity number of the individual or organization requesting information

SAFEGUARDS:

Information is maintained in the Justice Data Services Center which is a secured area. Special identity cards are required for admittance to the area.

RETENTION AND DISPOSAL:

Information is retained until the individual no longer wishes to utilize the service. Upon notification by an individual that he no longer wishes to use the service, or by lack of response of user to Annual Renewals, his record is electronically purged from the film.

SYSTEM MANAGER(S) AND ADDRESS:

Operation Service Supervisor,
National Criminal Justice Reference
Service; P.O. Box 6000, Rockville, MD
20850

NOTIFICATION PROCEDURE:

Address inquires to the system manager(s) at the above address.

RECORD ACCESS PROCEDURE:

A request for access to a record contained in this system shall be made in writing with the envelope and letter clearly marked. 'PRIVACY ACCESS REQUEST.' Access requests will be directed to the system manager(s) at the above address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager(s) listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources for the information contained in this system are those individuals covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OSC-001

SYSTEM NAME:

Central Index File and Associated Records, JUSTICE/OSC-001.

SYSTEM LOCATION:

U.S. Department of Justice, Special Counsel for Immigration Related Unfair Employment Practices (OSC), 1100 Connecticut Avenue, NW., Washington, DC 20036 and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigations, victims, potential witnesses and representatives on behalf of individuals and other correspondents on subjects directed or referred to OSC in potential or actual cases and matters of concern to OSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of (1) alphabetical indices bearing names of the individuals identified above and (2) the associated record to which the indices relate containing the general and particular records of all OSC correspondence, cases, matters, and memoranda, including but not limited to investigative reports, correspondence to and from OSC, internal memoranda legal papers, evidentiary materials and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 8 U.S.C. 1324b; and 29 CFR Part 44.

PURPOSE OF THE SYSTEM:

This system has been established to maintain investigatory and law enforcement records concerning charges filed with OSC by or on behalf of individuals alleging immigration-related employment discrimination. The system also contains charges filed with other law enforcement entities that have been referred to OSC pursuant to section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b) to provide relief for injured parties and to enforce prohibition of immigration-related, unfair employment practices.

Employees and officials of the Department may access the system to make decisions in the course of investigations and legal proceedings; to assist in preparing responses to correspondence from persons outside the Department; to prepare budget requests and various reports on the work product of OSC; and to carry out any other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record relating to a possible or potential violation of law may be disseminated to the appropriate Federal, State or local agency charged with the responsibility to enforce or implement such law; (2) in the course of an investigation or litigation of a case or matter, a record may be disseminated to a Federal, State or local agency, or to an individual organization, if there is reason to believe that such agency,

individual or organization possesses information or has the expertise in an official or technical capacity to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or expert analysis or to obtain the cooperation of a prospective witness or informant; (3) a record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which OSC is authorized to appear, when the United States, or any agency or subdivision thereof, is a part of litigation or has an interest in litigation and such records are determined by OSC to be arguably relevant to the litigation; (4) a record relating to a case or matter may be disseminated to an actual or potential party of litigation or the party's attorney (a) to negotiate or discuss such matters as settlement of the case or matter or (b) to conduct a formal or informal discovery proceeding; (5) a record relating to a case or matter that has been referred to OSC for investigation may be disseminated by OSC to referring agencies to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d; (7) information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (8) information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of OSC records; and (9) records may be disclosed to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is indexed, and stored in file jackets and on computer disks or tapes.

RETRIEVABILITY:

Entries are arranged alphabetically and are retrieved from the computer by names of the individuals covered by this system of records. Information may also

be retrieved from file jackets by an assigned number appearing in the manual index.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only those employees with the need to know in order to perform their duties will be able to access the information. Access to records in the computer system is restricted through use of password encryption: access to both the manual and computer system is restricted by locks on storage facilities.

RETENTION AND DISPOSAL:

Records are maintained in the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland, and some records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. A request for Records Disposition Authority is pending approval of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, Post Office Box 65490, NW, Washington, DC 20035.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(k)(2). To the extent that this system of records is not subject to exemption it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access shall be made in writing, with an envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "categories of records in the system," and any other information which is known and may be of assistance in locating the records, such as the name of the immigration-related employment discrimination case or matter involved, where and when the discrimination occurred, and the name of the judicial district involved. The requester will also provide a return address for transmitting the information.

Access request should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

Sources of information contained in this system include the individual covered by the system and may include any agency or person who has provided (or has offered to provide) information related to the law enforcement responsibilities of OSC.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/OSC-002

SYSTEM NAME:

Files on Correspondence Relating to Immigration Related Unfair Employment Practices from Persons Outside the Department of Justice, JUSTICE/OSC-002.

SYSTEM LOCATION:

U.S. Department of Justice, Special Counsel for Immigration Related Unfair Employment Practices (OSC), 1100 Connecticut Avenue, NW., Washington, D.C. 20036 and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who communicate in writing, in person or by telephone, who are filing complaints, requests for information or action; or individuals who are providing expressions of opinion regarding immigration-related, unfair employment matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains original correspondence regarding immigration-related, unfair employment matters and responses thereto. The system may also contain cover letters or notes to Department attorneys or other employees from Department personnel referring or commenting on correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 8 U.S.C. 1324b; and 28 CFR Part 44.

PURPOSE OF THE SYSTEM:

The purpose of this system is to maintain records of correspondence pertaining to immigration-related employment discrimination from persons outside the Department and copies of the OSC responses to the correspondence.

Employees and officials of the Department may access the system to ensure proper disposition of incoming mail; to determine the status and content of responses to correspondence; to respond to inquiries from OSC personnel, Office of Legislative Affairs, and from Congressional offices regarding the status of correspondence; to prepare budget requests and various reports on the work product of OSC; and to carry out any other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which OSC is authorized to appear, when the United States, or any agency or subdivision thereof, is a part of litigation or has an interest in litigation and such records are determined by OSC to be arguably relevant to the litigation; (2) a record relating to a case or matter may be disseminated to an actual or potential party of litigation or the party's attorney (a) to negotiate or discuss such matters as settlement of the case or matter or (b) to conduct a formal or informal discovery proceeding; (3) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties; (4) information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (5) information may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of OSC records; and (6) records may be disclosed to the National Archives and Records Administration and to the General Services Administration in records management

inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Information in the system is *indexed*, and stored in file jackets and on computer disks or tapes.

RETRIEVABILITY:

Entries are arranged alphabetically and are retrieved from the computer by names of the individuals covered by this system of records. Information may also be retrieved from file jackets by an assigned number appearing in the manual index.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only those employees with the need to know in order to perform their duties will be able to access the information. Access to the records in the computer system is restricted by use of password encryption; access to records in both the manual and computer system is restricted by locks on storage facilities.

RETENTION AND DISPOSAL:

Citizen correspondence unrelated to matters within the jurisdiction of OSC is destroyed after appropriate disposition and within ninety days from the date of correspondence. All other records are disposed of in accordance with General Records Schedule 14, items 3, 4, and 7.

SYSTEM MANAGER(S) AND ADDRESS:

Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, Post Office Box 65490, NW., Washington, DC 20035.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

Direct the request to the system manager listed above. Clearly mark the envelope and letter "Privacy Access Request;" provide the full name and notarized signature of the individual who is the subject of the record, his/her date and place of birth, or any other identifying number or information which may assist in locating the record; and a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information should direct their request to the System Manager listed above, stating clearly and concisely

what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the original correspondents, persons acting on behalf of original correspondents, and employees and officials of the Department responsible for the disposition of the correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/PRC-004**SYSTEM NAME:**

Labor and Pension Case, Legal File and General Correspondence System.

SYSTEM LOCATION:

All Labor and Pension cases, most legal files and some general correspondence material is located at: Commission Headquarters, 5550 Friendship Blvd., Chevy Chase, Md. 20815. The balance of the general correspondence material is located at the Commission's Regional Offices, the addresses of which are specified in the Inmate and Supervisions System.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for exemptions under 29 U.S.C. 504 and 29 U.S.C. 1111, all persons litigating with the U.S. Parole Commission, all persons corresponding with the Commission on subjects not amenable to being filed in an inmate or supervision file identified by an individual, and all Congressmen inquiring about constituents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pursuant to 29 U.S.C. 504 and 1111, the Commission processes applications of persons convicted of certain crimes for exemptions to allow their employment in the Labor or pension plan fields. The files contain memoranda, correspondence, and legal documents with information of a personal nature, i.e., family history, employment history, income and wealth, etc., and of a criminal history nature, i.e., record of arrests and convictions, and details as to the crime which barred employment. The final decision of the Commission in each case is a public document under the Freedom of Information Act. The General Counsel's Office of the Parole Commission maintains work files for each inmate or person on supervision who is litigating with the Commission. These files contain *personal* and criminal history type data regarding

inmates, and internal communications among attorneys, Commissioners and others developing the Commission's legal position in these cases. Files of the Commission's correspondence with Congressmen who inquire about constituents who have paroles or revocations pending or other subjects are maintained in the Chairman's Office and in the regions. Files of correspondence, notes, and memoranda concerning parole revocation, rescission, and related problems are also maintained in those locations. Some of this material duplicates material in the inmate files and contain criminal history type information about individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These files are maintained pursuant to 18 U.S.C. 4201, 5005-5041, 28 CFR Part O, Subpart V, 28 CFR Parts 2 and 4, 29 U.S.C. 504, 1111, and all statutory sections and procedural rules allowing inmates, persons under supervision, or others to litigate with the Parole Commission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Within the Parole Commission material in this system is used respectively by General Counsel's Office staff and Commission Members in processing exemption applications. The legal file material is used by General Counsel's Office staff in asserting the litigative position of the Commission. The general correspondence is used by the Commission personnel in responding to Congressmen, and by Commission Members and others in transacting the day-to-day business of the Commission. Final pension and labor case decisions are used by the Commission, the Justice, and Labor Departments, and the public to establish precedents in this field of administrative law.

In the event that material in this system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, State, or local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. A record from this system of records may be disclosed to a Federal, State or local agency maintaining civil, criminal or other relevant information if

necessary to obtain information relevant to an agency decision relating to pension or labor matters. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Release of information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the U.S. Parole Commission unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress:

Information contained in systems of records maintained by the U.S. Parole Commission, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and in response to a communication from the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record may be disclosed as a routine use to the NARA & GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

All data is on documents or other papers on bound files. Labor and pension case material is in the General Counsel's Office or the Chairman's Office at Headquarters, except for final decisions which are in the Freedom of Information Act reading room. Legal files are in the General Counsel's Office at Headquarters. General correspondence is in the Chairman's Office, the office of his staff at

Headquarters, and the offices of each Regional Commissioner.

RETRIEVABILITY:

Labor, pension, and legal file material is indexed or filed by name of applicant or litigant, respectively. General correspondence is indexed or filed by subject, time sequence or individuals to whom the item refers.

SAFEGUARDS:

Material is available only to Commission employees on a "need to know" basis. Storage locations are supervised by day and locked at night. Only disclosure made therefrom is to other agencies of the Department of Justice, the U.S. Probation Office, Federal enforcement agencies or the Congress. Disclosure to congressmen in response to inquiries concerning constituents is subject to the exemptions of the Freedom of Information Act. The Commission decisions in labor and pension cases are public information under the Freedom of Information Act.

RETENTION AND DISPOSAL:

Records are maintained for 10 years after the fiscal decision of the court, and are shredded or destroyed electronically thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, United States Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815.

RECORD SOURCE CATEGORIES:

a. Applicants for exemptions under 29 U.S.C. 504 and 29 U.S.C. 1111; b. U.S. Department of Labor; c. Administrative Law Judges and others connected with labor or pension cases; d. Litigants proceeding against Parole Commission; e. The Commission's legal staff and other Commission personnel; f. Congressmen and others making inquiries of Commission; g. Commission Members and employees responding to inquiries, corresponding with others, preparing speeches, policy statements and other means of contact with other branches of the Federal Government, State, and local governments, and the public.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b),

(c) and (e) and have been published in the Federal Register.

JUSTICE/PRC-005

SYSTEM NAME:

Office Operation and Personnel System.

SYSTEM LOCATION:

At each regional office as indicated in the "Inmate and Supervision File System Report" and at the U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Commission Members and employees of the U.S. Parole Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records, leave records, property schedules, budgets and actual expense figures, obligation schedules, expense and travel vouchers, and the balance of the usual paperwork to run a Government office efficiently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

All statutory sections, CFR sections, and OPM, MSPB, GSA, and OMB directives establishing procedures for government personnel, financial, and operational functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Day-to-day activity involving personnel, financial, procurement, maintenance, recordkeeping, mail delivery, and management functions.

Release of information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress:

Information contained in systems of records maintained by the U.S. Parole Commission, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and in response to a communication

from the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA):

A record may be disclosed as a routine use to the NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in paper files or on computer printouts. They are stored in operations areas of offices.

RETRIEVABILITY:

Data of a personal nature is in employee personnel files, used by Commission personnel files, used by Commission personnel on a "need to know" basis. Each employee has a right to see his own file on request. Other files are used by Commission personnel on a "need to know" basis.

SAFEGUARDS:

Files are supervised by appropriate personnel during the working day and are locked in rooms at night.

RETENTION AND DISPOSAL:

Cutoff files at the end of the calendar year, held at the agency for one year then transferred to the Washington National Records Center. Destroy seven years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

Same as the above.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

The U.S. Parole Commission, the Justice Management Division and all other contributing government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE-PRC-007

SYSTEM NAME:

Workload Record, Decision Result, and Annual Report System.

SYSTEM LOCATION:

U.S. Parole Commission Headquarters, 5550 Friendship Blvd., Chevy Chase, Md. 20815.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any inmate and parolee or mandatory releasee who has been the subject of a decision for the period covered in the report for which the data is used (prior month, prior quarter, prior year or other period).

CATEGORIES OF RECORDS IN THE SYSTEM:

Certain original input forms indicate the inmate or person under supervision by name and register number and give the date and specific statistical detail as to the decision made. They include criminal history type of information regarding the persons in questions. The principle types of decisions covered are after initial or review hearings, after a record review, after Regional Appeal, after National Appeal, and after a decision reopening and modifying. The data is input into a computer and is used to provide the following: (a) A monthly report of workload containing number and type of hearings per region further broken out by institutions within regions and type of sentence; (b) Bimonthly report on decision results indicating, among other statistics, number and type of decisions within above, and below guidelines broken out by examiners making the decisions; (c) Other or substitute reports as needed; and (d) Together with land posted data on other items of statistical value, this data is being used to create the Annual Report of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 4201-4216, 5005-5041, 28 CFR Part O, Supart V, 28 CFR Part 2

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) These records are used internally to analyze work product, the performance of evaluators, and various types of procedures and hearings and to evaluate the guidelines and other Commission procedures.

(b) These records are used to prepare an annual report to the Attorney General, and Congress and the public indicating in quantitative and qualitative terms Commission activity and accomplishment.

(c) In the event that material in this system indicates a violation or potential violation of law, whether a civil, criminal or regulatory in nature, and whether arising by general statute, or by

regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

(d) A record from this system of records may be disclosed to a Federal, State, or local agency maintaining civil, criminal or other relevant information if necessary to obtain information relevant to Parole Commission matters.

(e) A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that information is relevant and necessary to the requesting agency's decision on the matter.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the U.S. Parole Commission unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in the systems of records maintained by the U.S. Parole Commission not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and in response to a communication from the individual who is the subject of the record.

Release of information to the national archives and records Administration (NARA) and to the General Services Administration (GSA):

A record may be disclosed as a routine use to the NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper input forms are stored in folders only until information from them is entered into machine readable media. Monthly and other reports in the form of computer printouts are filed in folders. Annual report is in book form and stored in library shelves.

RETRIEVABILITY:

Data in this system can be retrieved by inmate's name and register number from the original input forms, and computer-produced storage media. It is usually only retrieved by region, by examiner, by type of decision made or hearing held, by relation to the guidelines and other similar means except for individual case retrievability when infrequently required.

SAFEGUARDS:

Data on forms, tape or other computer produced storage media retrievable by individual is stored in the Commission's Office in cabinets. Commission employees supervise this data by day and use it on a "need to know" basis. The rooms where it is stored are locked outside of office hours and the entire Headquarters building is locked at certain times with card key access. Monthly and other reports are for use of the Chairman, the Executive Officer and Commission Members and professional personnel. No information thereon is retrievable as pertaining to any individual except certain breakouts by Parole Commission employee examiners and by inmate in the guideline section of reports. These printouts are stored in the Commission Headquarters offices, all of which are supervised by day, and locked at night. The Annual Report contains no information identifiable by individual and is a public document.

RETENTION AND DISPOSAL:

The master file and documentation are to be retained permanently. All other related records, including reports & software, are to be destroyed when no longer needed for administrative use.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Research and Program Development, 5550 Friendship Blvd., Chevy Chase, Md. 20815.

RECORD SOURCE CATEGORIES:

(a) Commission inmates files; (b) Docket sheets; (c) Commission notices of action, orders, and documentation following hearings; (d) Commission warrant applications and warrants; (e) General Commission records and data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 88-23735 Filed 10-14-88; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Prevention and Intervention for Illegal Drug Use and AIDS Among High Risk Youth; Program Announcement Proposal Selection Criteria; Change

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of change of proposal selection criteria.

SUMMARY: Notice of change of proposal selection criteria Section VII. Procedures and Criteria for Selection, Paragraph A. Organizational Capability, Subsection 1.

SUPPLEMENTARY INFORMATION: This notice announces a change in section VII of the Federal Register, Vol. 53 No. 191, Monday, October 3, 1988, Pages 38926-38931 (Part VII). Section VII, Paragraph A, Subsection 1 of the program announcement specified the following:

1. The extent and quality of organizational experience in the development, delivery and coordination of research programs that have been national in scope. (10 points)

This subsection has been changed and now reads as follows:

1. The extent and quality of organizational experience in the development, delivery and coordination of research and development programs that have been national in scope. (10 points)

DATES: Effective October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, (202) 724-5929, or, Douglas Dodge, Special Emphasis Division, (202) 724-5914, OJJDP, 633 Indiana Avenue, NW., Washington, DC 20531.

Verne L. Speirs,
Administrator.

[FR Doc. 88-23845 Filed 10-14-88; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**Records Schedules; Availability and Request for Comments**

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before December 1, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or

a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1-AFU-85-26). Monthly military and civilian personnel data.
2. Department of Air Force (N1-AFU-86-23). Individual flight and aircrew evaluation records.
3. Department of Health and Human Services (N1-235-86-1). Personnel and payroll data in electronic form extracted from Official Personnel Folders, time cards, and SF-50Bs.
4. Department of Health and Human Services, Health Care Finance Administration (N1-440-89-1-P). Two month reduction in retention period for Medicare A and B claim files held in the annex of the Atlanta Federal Records Center.
5. Department of Justice, Immigration and Naturalization Service (N1-85-88-2). Case files on the Forensic Document Laboratory.
6. National Security Agency (N1-457-89-1, N1-457-89-2, and N1-457-89-3). These NSA schedules are classified in the interest of national security pursuant to Executive Order 12356 and are further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Pub. L. 86-36.
7. United States Information Agency, Executive Secretariat (N1-306-88-13). Suspense, administrative, and facilitative records. Records documenting policies and programs are permanent.
8. United States Information Agency, Deputy Director (N1-306-88-14). Facilitative and administrative records. Program and policy records are permanent.

9. United States Information Agency, Operations Center (N1-306-88-15). Chronological files. Substantive records are permanent.

10. United States Information Agency, President's U.S.-Soviet Exchange Initiative (N1-306-88-16). Administrative and facilitative records. Records on policies and programs are permanent.

Dated: October 11, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-23921 Filed 10-14-88; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-361 and 50-362]

**Southern California Edison Co., et al.,
San Onofre Nuclear Generating
Station, Units 2 and 3; Environmental
Assessment and Finding of No
Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-10 and Facility Operating License No. NPF-15 issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside California and the City of Anaheim, California (the licensee), for operation of San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action: The proposed amendments would incorporate proposed changes PCN-243 and PCN-244 described below.

Proposed change PCN-243 is a request to revise the following sections of the Technical Specifications for both units:

a. Table 3.3.9, "Remote Shutdown Monitoring Instrumentation," to allow for plant instrument improvements;

b. Section 3.3.3.7, "Fire Detection Instrumentation," to differentiate between early warning fire detectors and actuation fire detectors;

c. Section 3.7.8.2, "Spray and/or Sprinkler Systems," to more clearly define required compensatory actions for inoperable spray and/or sprinkler systems;

d. Section 3.7.8.3, "Fire Hose Stations," to more clearly define required compensatory actions for inoperable fire hose stations;

e. Section 3.7.9, "Fire Rated Assemblies," to comply with current NRC guidelines;

f. Bases 3/4.3.3.7, "Fire Detection Instrumentation," to be consistent with b. above;

g. Sections 4.7.8.2, 4.7.8.3, and 4.7.9.2 to change the current 18 month surveillance intervals to refueling outage intervals.

Proposed Change PCN-244 is a request to revise (1) License Conditions 2.C(14) and 2.C(12) of Units 2 and 3 respectively to reflect the revised fire protection program, and (2) License Conditions 2.G of both units to exempt fire protection program violations from the 24 hour reporting requirement.

The Need for the Proposed Action

The proposed changes are required to update the Technical Specifications and the License Conditions to reflect the fire protection program at San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 as described in the licensee's submittals and as approved by the NRC staff.

Environmental Impacts of the Proposed Action: The proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendments do not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendments do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on September 9, 1988 (53 FR 35138). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action: Because the Commission has concluded that there are no significant

environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981 and its Errata dated June 1986.

Agencies and Persons Consulted: The NRC staff has reviewed the licensee's request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 6, 1988 and supplementary letter dated August 25, 1988 which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 12th day of October, 1988.

For the Nuclear Regulatory Commission,

George W. Knighton,

Project Director, Project Directorate V
Division of Reactor Projects—III, IV, V and
Special Projects Office of Nuclear Reactor
Regulation.

[FR Doc. 88-23891 Filed 10-14-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination; GPU Nuclear Corp. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et al., (GPU or the licensee) for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

The proposed amendment would revise the Oyster Creek Technical

Specifications Table 3.1.1 by adding a reference to note "ll" in the startup mode for the High Reactor Pressure Scram function in accordance with the licensee's application for amendment dated September 28, 1988. Proposed note for "ll" will state: "The function not required to be operable with the reactor vessel head removed or unbolted." Table 3.1.1 note "kk" is being reserve for another Technical Specification change presently under review.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's proposed Technical Specification Change Request (TSCR) No. 174 would allow removing the High Pressure Scram function when the reactor head is removed or unbolted. This change is necessary to install new analog pressure sensors during the 12R refueling outage.

When the reactor temperature is less than 212°F and either the vessel head is removed or unbolted, there is no possibility of a major reactor pressure excursion. As a major excursion is not possible, the instrumentation required to scram the reactor in a excursion serves no purpose. Additionally, the Boiling Water Reactor Standard Technical Specifications specifically state that the High Pressure Scram function is not required when the head is unbolted or removed in the START UP mode. This request more closely aligns the Oyster Creek Nuclear Generating Station Technical Specifications with the Boiling Water Reactor Standard Technical Specifications.

Based on the above, the proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested change is applicable only under those previously evaluated conditions where the function has been determined not to be required.

Therefore, it does not increase the probability of consequences of any previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

As the requested change is only applicable to those conditions where the protective function has been determined not to be required, no new or different kind of accident is created.

(3) Involve a significant reduction in the margin of safety.

As the applicability of the requested change has been limited to those times when the function is not required, no reduction in a margin of safety is possible.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By November 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request

and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding

the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 200 N. Street NW., Washington, DC 20037, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board

designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 28, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Local Public Document Room Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 11th day of October 1988.

For the Nuclear Regulatory Commission,
Alexander W. Dromerick,

*Project Manager, Project Directorate I-4
Division of Reactor Projects I/II Office of
Nuclear Reactor Regulation.*

[FR Doc. 88-23892 Filed 10-14-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Revision of SF 61-B, Declaration of Appointee, Submitted to OMB for Clearance

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), this notice announces the proposed revision of SF 61-B, Declaration of Appointee, which was submitted to OMB for clearance. SF 61-B contains questions covering an appointee's history since the date of application and is completed before entering on duty so that the appointing officer can be sure the appointment or conversion-to-appointment conforms to the laws and regulations regarding appointment of relatives, suitability, and pay and benefits. Almost 600,000 forms are completed each year; the form takes approximately 5 minutes to complete, for a total of 50,000 hours per year. For copies of this proposal, call C. Ronald Truworthy, Agency Clearance Officer, on (202) 632-0261.

DATE: Comments on this proposal should be received on or before October 27, 1988.

ADDRESSES: Send or deliver comments to—

C. Ronald Truworthy, Agency
Clearance Officer, U.S. Office of

Personnel Management, Room 6410,
1900 E Street NW., Washington, DC
20415.

and
Joseph Lackey, Information Desk
Officer, Office of Information and
Regulatory Affairs, Office of
Management and Budget, Room 3235,
Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Carol E. Porter, (202) 632-4453, U.S.
Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-23911 Filed 10-14-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF STATE

Advisory Committee on Oceans and International Environmental and Scientific Affairs; Partially Closed Meeting

Department of State officials responsible for International Burden-Sharing in Science and Technology and for coordinating international aspects of global climate change issues will be present at 9:30 a.m. Tuesday, November 1 in Room 1207 of the Department of State at 2201 C Street, NW. Washington, DC, to discuss key issues and problems in international burden-sharing and U.S. government participation in the Intergovernmental Panel on Climate Change. This session, which is being convened by the Department's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will be open to the public and will last until noon. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Advanced Technology by contacting William Moody, telephone (202) 647-4923. All attendees must use the C street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 9:00 a.m. on Monday, October 31 in a session which will not be open to the public. This session will include discussion of classified material under 5 U.S.C. 552b (c)(1) and U.S.C.

552b(c)(9)(b). The disclosure of classified material and revelation of considerations which go into policy development could adversely affect the ability of the United States to achieve its foreign policy objectives. The purposes of these discussions will be to elicit views and discuss issues relating to International Burden Sharing in Science and Technology. The portion of the meeting will include classified briefings and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on this meeting should be directed to William Moody of the Office of Advanced Technology, of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. He may be reached by telephone on (202) 647-4923.

Richard J. Smith,

*Vice Chairman, Advisory Committee on
Oceans and International Environmental and
Scientific Affairs.*

October 12, 1988.

[FR Doc. 88-23936 Filed 10-14-88; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended

October 7, 1988.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45859

Date Filed: October 4, 1988.

*Due Date for Answers, Conforming
Applications, or Motion to Modify
Scope:* November 1, 1988.

Description: Application of Air 2000 Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in foreign charter air transportation of persons and their accompanying baggage, property and mail as follows: Between any point or

points in the United Kingdom of Great Britain and Northern Ireland and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-23883 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting International Cargo Rate Flexibility Level

Policy statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 88-4-45, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting October 1, 1988, we have projected nonfuel costs based on the year ended June 30, 1988, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 88-10-15 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

Atlantic.....	1.0402
Western Hemisphere.....	.9556
Pacific.....	1.1891

FOR FURTHER INFORMATION CONTACT:

Julien Schrenk, (202) 366-2441. By the Department of Transportation:

Dated: October 11, 1988.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-23882 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 88-7-33 set the currently effective two-month SFFL applicable through September 30, 1988.

In establishing the SFFL for the two-month period beginning October 1, 1988, we have projected nonfuel costs based on the year ended June 30, 1988 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 88-10-14 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic.....	1.1818
Latin American.....	1.1925
Pacific.....	1.5612
Canada.....	1.2159

FOR FURTHER INFORMATION CONTACT:

Keith A. Shangraw (202) 366-2439 or Julien R. Schrenk (202) 366-2441.

By the Department of Transportation.

Dated: October 11, 1988.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-23881 Filed 10-14-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 12, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under

the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0014.

Form Number: None.

Type of Review: Extension.

Title: Comptroller's Manual for Corporate Activities.

Description: The Comptroller's Manual for Corporate Activities ("Manual") explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 2,940.

Estimated Burden Hours Per

Response: 16 hours 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 47,573.

Clearance Officer: John Ference, (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Neal, (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-23907 Filed 10-14-88; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, October 18, 1988, 2:30 p.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. FY 89 Operating Plan

The Commission will consider the Operating Plan for Fiscal Year 1989.

2. Tremolite in Limestone Products, HP 87-1

The staff will brief the Commission on Petition HP 87-1 from Mark Germiné concerning tremolite in limestone products.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.

October, 11, 1988.

[FR Doc. 88-23990 Filed 10-13-88; 3:06 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits of the Federal Reserve System

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 53 FR 39715, October 11, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 4:30 p.m., Thursday, October 13, 1988.

CHANGES IN THE MEETING:

The Committee has determined to open to public observation the following closed item and to consider the item at an open meeting on Thursday, October 13, 1988, at 4:30 p.m.

Budget review of the Office of Employee Benefits.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: October 13, 1988.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 88-23931 Filed 10-13-88; 10:21 am]

BILLING CODE 6210-01-M

NATIONAL ECONOMIC COMMISSION

ACTION: Notice of Briefing Session.

SUMMARY: A briefing session for members of the National Economic Commission will take place on November 1. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

DATE, TIME AND PLACE: November 1, 1988. 2:00-5:30 pm. Hall of States, 444 North Capitol Street, NW., Room 239. The briefing will be open to the public.

AGENDA: Presentation by staff and outside experts on research and development and defense issues.

FOR ADDITIONAL INFORMATION: Jim Hildreth at 425-8986, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See Federal Register, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88-24001 Filed 10-13-88; 3:06 pm]

BILLING CODE 6820-45-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1409)

TIME AND DATE: 10 a.m. (E.d.t.), October 19, 1988.

PLACE: Southwest Virginia 4-H Educational Center, Conference Area, State Highway 609, Abingdon, Virginia.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 28, 1988.

Action Items

New Business

A—Budget and Financing

A1. Fiscal Year 1989 Budget Financed from Appropriations.

A2. Fiscal Year 1989 Budget Financed from Nonpower Proceeds.

A3. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Upper

Head Injection Confirmatory Appendix K Analysis for Sequoyah Nuclear Plant.

B—Purchase Awards

B1. Invitation PD-30373A—Indefinite Quantity Term Agreement for Crushed Limestone for Shawnee Fossil Plant AFBC Unit 10.

C—Power Items

C1. Replacement of Cycle and Save Program with Revised Load Management Program.

C2. Replacement Power Contracts with Texas Eastern Transmission Corporation to Provide Service to Stations at Egypt, Mississippi, and Mt. Pleasant, Tennessee.

D—Personnel Items

D1. Exercise of Option to Contract with Coopers & Lybrand for Fiscal Year 1989 Audit Services.

D2. Supplement No. 2 to Personal Services Contract No. TV-73042A with Associated Project Analysts (APA).

D3. Personal Services Contract with Tenera, L.P., to Provide for Appendix R, Fire Protection, Analyses at Browns Ferry and Watts Bar Nuclear Plants.

E—Real Property Transactions

E1. Filing of Condemnation Cases.

E2. Sale of a Permanent Easement (0.09 Acres) for an Underground Fiber Optic Cable to American Telephone and Telegraph (AT&T) Communications, Inc., Located at TVA's Jetport Substation Property in Huntsville, Alabama.

E3. Sale of a 5-Year Term Easement to Global Power Company for Access to the Foreign Trade Zone and Turbine Hill Areas at the Hartsville Distribution Center.

E4. Grant of Permanent Easement for a Road Right-of-way to Morgan County, Tennessee, Affecting 0.417 Acres.

F—Unclassified

F1. Changes in Authority to Execute and Attest Documents Dealing with Real Estate Transactions.

F2. Salary Rate Revisions for Represented Employees and Other Recommendations Resulting from the 36th Salary Policy Negotiations.

F3. Revised Pay Plan and Salary for Excluded Positions.

F4. Supplement No. 5 to Contract No. TV-67766A Between TVA and Tennessee State University to Assist in Administering the Craft/Skill Upgrade Training Program.

F5. Proposed Designation of Susan S. Fendley and Shirley W. Kerr as Assistant Secretaries of TVA.

F6. Supplement No. 6 to Contract No. TV-62311A with the Tennessee Emergency Management Agency (TEMA).

¹ Items approved by individual Board members. This would give formal ratification to the Board's action.

F7. Supplement No. 8 to Contract No. TV-62313A with the State of Alabama.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael,
Manager of Public Affairs, or a member
of his staff can respond to requests for

information about this meeting. Call
(615) 632-8000, Knoxville, Tennessee.
Information is also available at TVA's
Washington Office (202) 479-4412.

Dated: October 12, 1988.

William L. Osteen, Jr.

*Associate General Counsel and Assistant
Secretary.*

[FR Doc. 88-23938 Filed 10-13-88; 12:03 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

On page 39633, in the second column, in the table, under "Time period", in the first entry, remove "§ 501.63-".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 3

Procedural Due Process

Correction

In proposed rule document 88-22143 beginning on page 37797 in the issue of Wednesday, September 28, 1988, make the following correction:

§ 3.105 [Corrected]

On page 37801, in the first column, in § 3.105(h)(2)(iii), in the fifth line, "shall be specified" should read "shall be as specified".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-501]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Final Results of Antidumping Duty Administrative Review

Correction

In notice document 88-23380 beginning on page 39632 in the issue of Tuesday, October 11, 1988, make the following correction:

Tested Great Federal People

Monday
October 17, 1988

Part II

Office of Personnel Management

5 CFR Part 300

Employment (General); Government Use of Private Sector Temporaries; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 300

Employment (General); Government Use of Private Sector Temporaries

AGENCY: Office of Personnel
Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations establishing criteria and conditions under which agencies may use temporary help service firms to provide needed services on short notice for brief periods without creating an employer-employee relationship.

DATES: Written comments will be considered if received no later than December 1, 1988.

ADDRESS: Send or deliver written comments to Chief, Staffing Policy Division, Career Entry Group, Office of Personnel Management, Room 6504, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, (202) 653-9407.

SUPPLEMENTARY INFORMATION: For decades, private companies have turned to temporary help firms for services in emergencies, illnesses, or other interim circumstances when it was impractical to use their own employees. We have received numerous requests from Federal agencies to use temporary help services. Agencies have not used those services because they were viewed as coming under the "Pellerzi-Mondello" opinions in FPM Letters 300-8 and 300-12 issued in 1967 and 1968 respectively, which hold that a contract which creates or results in an employer-employee relationship between an agency and a contractor's employees conflicts with the laws under which civil service employees must be hired.

After very careful review, we believe it is necessary to clarify the Pellerzi-Mondello opinions as far as the use of temporary help firms is concerned. We found that private companies had no problem with distinguishing between their relations with their own employees and those of a temporary help firm. The distinctions are clear cut and well established in day-to-day practice and use of such services is commonplace. In the full sense of the term, the temporary help firm is the employer of the personnel whose services it provides to client organizations. State and local governments have successfully used temporary help firms without detriment to their civil service system. It appears the same services could be utilized by

the Federal sector without compromising the civil service.

In addition, over the last 10 years a series of court decisions have denied claims asserting that individual employees of various types of firms with Federal contracts were entitled to be considered Federal employees and eligible for Federal employee benefits. The decisions found the claimants did not meet the definition of a Federal employee in 5 U.S.C. 2105. The statutory tests are whether the individual is formally appointed to the civil service by an authorized Federal official or employee, is performing an authorized Federal function, and is supervised by a Federal official or employee. Presumably, a claim by a temporary help firm employee likely would be viewed in the same way.

Agencies need the flexibility to help keep up with the demands of a rapidly changing work environment both now and in the future. Agencies would use temporary help services when (a) an employee is absent because of emergency, accident, maternity leave, illness, or other special circumstances, (b) an activity needs to be sustained during the time it is being transferred, contracted out, or terminated, or (c) the work is in a shortage occupation which the agency is aggressively seeking to fill permanently.

At the same time, we also note these situations would provide employment opportunities for homemakers, students, persons who are between jobs, waiting for a specific opportunity, or reentering the labor market and many others who want to work but cannot accept continuing employment at the moment.

In light of these considerations, we think the prudent approach is to recognize that agencies may use temporary help services, provided they adhere to our restrictions to avoid the creation or development of an employer-employee relationship with a contractor's employees.

Agency use of these regulations would be subject to review under OPM's regular compliance and evaluation activities.

Accordingly, the Office of Personnel Management is proposing regulations to establish the conditions and criteria agencies must follow to avoid conflict with the civil service employment laws if they elect to use the services of a temporary help firm. The restrictions include a limit of 45 days in any 6-month period on the service of any one individual, a ban on displacing current employees, a requirement allowing use only in the absence of qualified, available applicants or employees, and

a list of situations in which use is permitted.

Each agency will be responsible for deciding whether to use temporary help firms and for using them as they would any other management alternative to advance the work of the agency. As in other management actions, an agency should weigh program needs with relative costs. Each agency will be responsible for observing the conditions and criteria of these regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations establish criteria to avoid treating private sector employees as if they were Federal employees.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Part 300 continues to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., page 218; Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204; E.O. 11478, 3 CFR, 1966-1970 Comp., page 803; § 300.104 also issued under 5 U.S.C. 7701 et seq.; § 300.301 also issued under 5 U.S.C. 3324; § 300.603 also issued under 5 U.S.C. 1104.

2. Subpart E is added to read as follows:

Subpart E—Use of Private Sector Temporaries

Sec.

- 300.501 Definitions
- 300.502 Coverage
- 300.503 Conditions for using private sector temporaries
- 300.504 Prohibition on employer-employee relationship
- 300.505 Relationship to civil service appointing authorities

Subpart E—Use of Private Sector Temporaries

§ 300.501 Definitions.

For purposes of this subpart:

(a) A "temporary help service firm" is a private sector entity which quickly provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent periods. The firm, not the client organization, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, disciplines and terminates its employees.

(b) "Private sector temporaries" are those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to work onsite at various client organizations who have contracted for the temporary use of their skills when required.

§ 300.502 Coverage.

These regulations apply to agencies with positions in the competitive service, positions in the excepted service under Schedules A, B, and C, and positions in the Senior Executive Service.

§ 300.503 Conditions for using private sector temporaries.

An agency may enter into a contract with a temporary help service firm for the brief or intermittent use of the skills of its private sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following situations exists—

(1) One or more employees is absent because of emergency, accident, maternity leave, illness, or other special circumstances, but excluding vacations.

(2) An activity which is undergoing transfer to another location, contracting out, or termination needs to be sustained, or

(3) The work is in a shortage occupation which the agency is aggressively seeking to fill permanently.

(b) Qualified job applicants including individuals on reemployment priority lists are not immediately available and employees cannot be reassigned or detailed without causing undue delay in their regular work.

(c) Use of these services shall not cause displacement of a Federal employee.

§ 300.504 Prohibition on employer-employee relationship.

Services furnished by temporary help firms shall be performed by their employees who shall not be considered or treated as Federal employees for any purpose and shall not be eligible for civil service employee benefits, including retirement. To help avoid creating the appearance of such a relationship, agencies shall observe the following requirements:

(a) No one employee of a temporary help firm may work at an agency for more than 45 workdays in a 6-month period. If the conditions in § 300.503 of this subpart continue to exist, an agency

may secure a different individual from the firm or, provided it can show that termination would cause significant delay, an agency may request OPM to authorize the extension of the same individual for a specified period. However, for a shortage occupation situation authorized under paragraph (a)(3) in § 300.503 of this subpart, an agency's use of private sector temporaries shall not exceed a total of 90 workdays in a 12-month period to perform the work of a particular position.

(b) Individual employees of a temporary help firm providing temporary service to a Federal agency may be eligible for Federal employment only if appropriate civil service hiring procedures are applied to them.

(c) Agencies shall train their employees in appropriate mechanisms for interaction with private sector temporaries to assure that the supervisory responsibilities identified in paragraph (a) of § 300.501 of this subpart are carried out by the temporary help service firm.

§ 300.505 Relationship to civil service appointing authorities.

Agencies continue to have full authority to decide to meet their temporary needs by appointing individuals as civil service employees.

[FR Doc. 88-23727 Filed 10-14-88; 8:45 am]

BILLING CODE 5325-01-M

Federal Register

Monday
October 17, 1988

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 614

Unemployment Compensation for Ex-Servicemembers; Final Rule

DEPARTMENT OF LABOR

Employment and Training
Administration

20 CFR Part 614

Unemployment Compensation for Ex-
ServicemembersAGENCY: Employment and Training
Administration, Labor.

ACTION: Final rule.

SUMMARY: These are the revised regulations of the Employment and Training Administration, Department of Labor (Department) for implementing the program of Unemployment Compensation for Ex-servicemembers (UCX). Changes to the regulations incorporate statutory amendments, which change the criteria for determining Federal service for UCX purposes, require a 4-week waiting period prior to receipt of benefits, and limit to thirteen times the weekly benefit amount (13 x WBA) the aggregate amount of benefits payable in a single benefit year. Two new provisions provide for: (1) Restoration by the States of funds of the United States for UCX benefits improperly paid in cases where a State fails to use, or use in a timely manner, the crossmatch mechanism at the claims control center designated by the Department; and (2) notice of claim filing, and subsequent notices of monetary and nonmonetary determinations with respect to UCX benefits, to be given to the appropriate Federal military agency to the same extent that chargeable private sector employers are given such notices under State law and practice unless an alternative mechanism is established by the Department of Labor in lieu of such notices. The amendments are applicable to weeks of unemployment beginning after October 25, 1982, and apply to terminations of service on or after July 1, 1981, with the exception of the revised departmental interpretations with respect to (1) the 4-week waiting period as including a State's 1-week waiting period and (2) the applicability of the 13 x WBA limitation to a single benefit year. The revised departmental interpretations took effect when Unemployment Insurance Program Letter (UIPL) No. 7-88 was published as a notice in the *Federal Register* on November 27, 1987 (52 FR 45396). The amendments also apply to individuals separated from the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) on or after July 1, 1981. The proposed rule was published in the *Federal Register* on

December 9, 1987, and the final regulations include changes in response to the comments received on the proposed rule as well as other changes.

EFFECTIVE DATE: November 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenzo Roberts, Group Chief, Division of Program Development and Implementation, Office of Program Management, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 535-0309 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The UCX program is financed by Federal funds to furnish unemployment benefits to eligible individuals who are separated from military service and are unable to obtain work. The program was created by Public Law 85-848, approved on August 28, 1958, which has been codified at 5 U.S.C. 8521-8525.

Section 201 of the Miscellaneous Revenue Act of 1982 (the 1982 amendments) (Pub. L. 97-362, 96 Stat. 1726, 1732) amended 5 U.S.C. 8521, and affects entitlement to unemployment compensation for ex-servicemembers (UCX) in that: (1) The eligibility requirements for determining qualifying "Federal service" were revised; (2) an individual shall not be entitled to compensation for any week before the fifth week beginning after the week in which the individual was discharged or released; and (3) the aggregate amount of compensation payable on the basis of Federal military service to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment. The amendments to 5 U.S.C. 8521 apply to individuals separated from military service and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) on or after July 1, 1981, but only with respect to weeks of unemployment beginning after October 25, 1982.

These amendments require implementing changes in the UCX regulations, and supersede the 1981 amendments to section 8521 (sec. 2405 of Pub. L. 97-35) which were effective from August 14, 1981, through October 25, 1982. These final regulations implement the 1982 amendments.

Discussion of Comments and Changes

The proposal to revise the UCX regulations at Part 614 was published in the *Federal Register* on December 9, 1987 (52 FR 46604). Comments on the proposed revision were solicited through January 8, 1988, and the proposal was

further reviewed in the Department. A summary of the comments received and changes made to the regulations is set out below.

The Department received timely written responses to the proposal from eight State Employment Security Agencies (SESAs). The SESAs that commented on the proposal were: the New Mexico Department of Labor (NMDOL); the Wisconsin Department of Industry, Labor and Human Relations (WDOLHR); the California Employment Development Department (CEDD); the New Jersey Department of Labor (NJLDR); the Florida Department of Labor and Employment Security (FDOLES); the Tennessee Department of Employment Security (TDES); the Oregon Department of Human Resources (ODHR); and the Georgia Department of Labor (GDOL).

In regard to § 614.6(d)(2), which would require SESAs to send to the appropriate Federal military agencies copies of any notice furnished to a claimant under § 614.6(d)(1), the CEDD commented that item 5 (inadvertently identified as item 6 by the CEDD) of the Supplementary Information section of the proposed rule refers only to notices of nonmonetary determination while the language of § 614.6(d)(2) does not clearly distinguish between monetary and nonmonetary determinations. Secondly, it stated that employer entitlement to notice of a nonmonetary determination is generally established by a timely response to a first notice of the filing of a claim. In the case of UCX claims, no such first notice is sent to the branch of service nor do the proposed regulations require such notice.

The Department agrees with the comment and a change to the proposed § 614.6(d)(2) has been made to provide that a notice of claim filing and any subsequent notices of monetary and nonmonetary determinations, furnished to chargeable private sector employers shall also be sent to each Federal military agency for which the individual performed Federal military service during the appropriate base period to the extent that chargeable private sector employers are given notice under State law and practice.

The CEDD further commented that § 614.6(d)(2) should not be included in final regulations since the language of Pub. L. 97-362 does not direct this change nor is it clear that Congress intended such change.

The Department does not agree that language requiring that a notice of claim filing be sent to the appropriate Federal military agency should be deleted but agrees that Pub. L. 97-362 does not

direct this change. The Department believes that this change to have a notice of claim filing and subsequent notices of monetary and nonmonetary determinations sent to the appropriate Federal military agency is necessary to permit the military to review the UCX eligibility determination before any benefits are paid to the same extent they are provided private sector employers. This will allow the military to fulfill their responsibilities. While this right is currently provided by § 614.7(d) of the existing UCX regulations, without notice of a determination, the Federal military agency has no way to exercise its right to seek appeal and review under State law in a timely manner. In the past, the military could only take exception to a UCX eligibility determination after they were billed by the Department and benefits had already been paid by the SESA.

Several SESAs commented that the proposed regulation at § 614.6(d)(2), would place an extra burden on SESAs while very few monetary determinations are adjudicated in which the Armed Forces would be interested. The Department does not agree this would be burdensome to SESAs since such notices are already sent to private sector employers and SESAs generally have multicopies available to enable them to designate a copy to be sent to the military when appropriate. The various branches of military service have requested notification of an ex-servicemember's eligibility for UCX to permit them to review the UCX eligibility determination before any benefits are paid.

The ODHR also commented on § 614.6(d)(2) of the proposed rule, suggesting as an alternative to the mailing of a copy of the monetary determination to the appropriate Federal military agencies that a potential charge listing be provided to the branch of the service instead.

The Department does not accept this suggestion. While providing the military a potential charge listing would allow protests prior to benefits being paid, such a listing is not currently provided other employers under State law and practice. Proposed § 614.6(d)(2) as now written, provides the military the same notices provided chargeable private sector employers under State law and practice. No change is made in the regulation on this point.

The ODHR further commented that sending a notice of the monetary determination as required by § 614.6(d)(2) to the branch of service may create a confidentiality problem if the person worked for more than one employer during the base year.

The Department disagrees with this comment because if a notice of claim filing and subsequent notices of monetary and nonmonetary determinations are sent to private sector employers in a State, it does not create a confidentiality problem. Further, the notices of determinations that will be provided the military will not be in violation of the Privacy Act of 1974, 5 U.S.C. 552a because SESAs are not covered under this Act. Consequently, the Department feels that § 614.6(d)(2) is presently adequate. Therefore, no change is made in the final regulations based on this comment.

The TDES commented that they do not agree with proposed § 614.6 (d)(2) which requires States to send nonmonetary determinations to the appropriate branch of the armed forces because the decision to approve or reject UCX claims is largely dictated by rules established by the armed forces. Consequently, if an ex-servicemember's DD Form 214 clearly indicates that he/she meets all of the Federal service criteria, the claim is automatically approved, and the State agency does not issue a written decision on such a claim. On the other hand, if the ex-servicemember's claim is rejected because he/she does not meet the Federal service criteria, a nonmonetary determination is issued to the claimant. However, if an ex-servicemember's eligibility cannot be clearly determined by the State agency's review of DD Form 214, Form ETA 843 is used by the State agency to request clarification from the appropriate branch of service and depending on the substance of the response, the claim is either approved with no written decision issued or disapproved and a nonmonetary determination issued to the claimant. For these reasons, the State contends that sending the nonmonetary determination to the armed forces is a redundant process.

The Department entirely disagrees that sending copies of the monetary and nonmonetary determination to the uniformed services is a redundant process. As currently constituted, DD Forms 214 do not specify whether a claimant's military service meets the Federal service criteria. They provide factual information about the period of military service which, in conjunction with the legal requirements for Federal military service and a listing of acceptable narrative reasons for less than a full first term of service separation, are used by the SESA to make such a determination. The proposed § 614.6(d)(2), which will provide the Federal military agency with a notice of claim filing and subsequent

determination notices of monetary and nonmonetary determinations to the same extent that chargeable employers are given such notices, affords the Federal military agency opportunity to contest whether a claimant's military service meets the Federal service criteria and to appeal timely the decision of a SESA when it has incorrectly used Federal findings reflected on the DD Form 214. Such a process provides military employers the same rights of participation and appeal as a private sector and Federal civilian employers. Furthermore, under the present regulation § 614.6(d), notices of monetary and nonmonetary determinations are expressly required to be given to claimants and the only exceptions are with respect to nonmonetary determinations in certain circumstances as authorized under § 614.6(g). The material change in § 614.6(d) is to require the same notices to be given to the appropriate Federal military agency. For these reasons, the Tennessee comments are rejected.

The TDES also commented that a provision should be added to the regulations to make the military liable for any overpayments made by the State agency as a result of them not responding timely to requests made by the State for required military information needed to make accurate UCX eligibility determinations. This would be compatible with the Tennessee law and encourage the military to respond timely.

The Department does not accept this comment because the military is already responsible for the cost of the UCX program. All Federal agencies are required to honor the total bill that they receive as a result of UCX benefits being paid by the States. The military agency receives credit for overpayments only when and if recovered by the State agency. While information required for UCX determinations may be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, Federal military findings may only be obtained from military documents, the applicable Schedule of Remuneration, and from Federal military agencies. If a State agency is awaiting information from the military pertaining to Federal military findings, it should, as appropriate, either postpone making a determination until receipt of such information or make a determination based solely upon the military documents available.

The CEDD made numerous comments concerning proposed § 614.15(e) which

would have provided for non-reimbursement for improper UCX determinations when a State agency had advertently failed to use the crossmatch mechanism at the claims control center designated by the Department. These comments were:

- That item 6 (which it mistakenly identified as item 7) of the Supplementary Information section of the proposed rule used the phrase "any State which advertently fails to use the crossmatch mechanism" while the regulations at § 614.15(e) do not contain the word "advertently";
- That the proposed regulations did not define "improperly paid";
- That the proposed regulations do not describe the process by which non-reimbursement would be initiated;
- That non-reimbursement for improperly paid UCX benefits is clearly inconsistent with existing Federal claim policy regarding reimbursement for benefits paid properly or otherwise; and finally
- That the proposed § 614.15(e) should not be included in final regulations since the language of Pub. L. 97-362 does not direct this change nor is it clear that Congress intended such change.

The Department has noted the comments made by the CEDD and agrees that the provision and the process by which it would be initiated could be made clearer. Accordingly, proposed § 614.15(e) has been deleted from the final regulation and § 614.1(d) has been amended instead. The amendment to § 614.1(d) adds a new subparagraph (2)(ii) to provide for notice to a State agency when the Department believes that a State has failed to use, or use in a timely manner, the crossmatch mechanism at the claim control center designated by the Department and to specify the action a State agency must take when so notified. It also identifies the actions which must be taken when failure to utilize or utilize in a timely manner the crossmatch mechanism result in a determination, redetermination or decision which is not legally warranted under the Act or this Part. Provision for reconsideration of a notice so issued and opportunity to present views and arguments, if desired, is provided by § 614.1(d)(5).

The Department does not concur with CEDD comment that non-reimbursement for improperly paid UCX benefits is inconsistent with existing Federal claim policy. Such authority is currently contained in § 614.1(d)(4). Nonetheless to make it abundantly clear that the Secretary's authority, contained in § 614.1(d)(4), to decide whether the State

shall be required to restore the funds of the United States for any sums paid under determinations, redeterminations, or decisions not legally warranted, will be applied to determinations, redeterminations, or decisions not legally warranted due to failure to use, or use in a timely manner, the crossmatch mechanism at the claims control center designated by the Department, a specific reference to new subparagraph (2)(ii) has been included in § 614.1(d)(4)(ii).

One commenter suggested that the Department desex the language in § 614.2(g)(1)(ii)(A) to read "his/her."

Although the reference to "his" was overlooked in the proposal, the Department recognizes the need for this change which is incorporated in the final regulations.

Several SESAs commented that the proposed rule did not indicate an address or agency title of the military agencies to which copies of the determinations should be mailed.

All SESAs will be provided the specific addresses and agency titles to send such notices by a program directive. It would not be appropriate to include such information in regulations because it is subject to frequent change. Therefore, no change has been made.

Proposed § 614.5(c) incorporates, as Appendix A to Part 614, the Secretary's "Standard for Claims Filing, Claimant Reporting, Job Finding and Employment Services" in the *Employment Security Manual (ES Manual)*, Part V, sections 5000-5004. A commenter stated that Appendix A to Part 614 is outdated and appears to be taken word for word from the 1968 *ES Manual*.

The *ES Manual*, Part V, sections 5000-5004 has not been revised in several years and certain other sections of the *ES Manual* are now obsolete. However, Part V, sections 5000-5004 of the *ES Manual*, is still in effect. Therefore, the information in Appendix A to Part 614 is based on the most recent *ES Manual* revision.

The ODHR objected to incorporating section 5001 in Appendix A to Part 614. It commented that requiring an individual to file a claim in person and to report in person for the waiting week and first compensable week fails to recognize that budget cuts over the past seven years have caused States to implement alternate reporting procedures (such as "double bypass" procedures where claimants report by mail) and close local offices.

The Department disagrees with the comment by the Oregon DHR. Paragraph A. 3 of section 5001 provides exceptions to the in-person reporting procedures. It allows State agencies some flexibility in

adopting alternate reporting procedures, such as "double bypass" reporting. Therefore, no change is made in the final regulations.

The Missouri Department of Labor and Industrial Relations (DOLIR) did not comment on the proposed rule. However, the State agency raised several interesting comments on Unemployment Insurance Program Letter (UIPL) No. 7-88, revising this Department's previous interpretations set forth in UIPL No. 9-83 on December 17, 1982, with respect to:

1. The 4-week waiting period (5 U.S.C. 8521(c)(1)). Under the revised interpretation, the State waiting period may be included in the 4-week Federal waiting period; and

2. The maximum amount of UCX payable in a benefit year (5 U.S.C. 8521(c)(2)). Under the revised interpretation, the maximum amount of UCX which shall be payable to an individual with respect to a benefit year shall not exceed 13 times WBA for total unemployment. An individual may now use lag quarter Federal wages (wages that are not within a 1-year period prior to the filing of a claim known as the State's "base period" and wages that are not used to establish monetary eligibility within a benefit year) to establish monetary entitlement for a subsequent benefit year even if the individual's entitlement to compensation payable equalled 13 times the WBA for the first benefit year including any State or Federal extension.

The questions of the MDOLIR, and the Department's responses, follow:

Q. Does the term "lag quarter" mean the entire period of time after the last day of the base period to the date of separation from military service? This terminology of lag quarter could mean one three-month calendar quarter or nearly two three-month calendar quarters, depending upon when they were separated.

A. Yes. The term "lag quarter" as used in UIPL No. 7-88 means the period of Federal military wages subsequent to the end of the base period of the first benefit year and which is within the base period (under the State law) for the second benefit year. To establish monetary entitlement for a second benefit year, an individual may now use any unused Federal military wages that are within the base period of the subsequent claim filed even if the individual's entitlement to compensation payable equalled 13 times the WBA for the first benefit year. Therefore, UCX benefits may be payable for a maximum of 13 times the WBA during any benefit

year for which monetary entitlement is based on UCX wages.

Q. Is the second benefit year limited to a maximum UCX entitlement of 13 weeks? By using two calendar quarters as outlined in question one, a claimant could establish 17-plus weeks of entitlement in a second Missouri benefit year when he was only able, under law, to establish 13 weeks under four quarters of entitlement in the first benefit year.

A. Yes. Federal law requires a 13-week limitation on UCX benefits in any single benefit year.

Q. Since it seems clear in the language of the UIPL that the intention is to allow waiting week credit and Missouri Law provides for the payment of the waiting week after nine consecutive compensable weeks, is the new interpretation sufficient to allow payment of the waiting week under Missouri Law?

A. No. Under the revised interpretation, the State waiting period is normally included in the 4-week Federal waiting period required by 5 U.S.C. 8521(c)(1). Thus, Federal law precludes payment for the waiting week as provided under the Missouri law, even though civilian claimants are paid for the waiting week after 9 consecutive compensable weeks. The only situation in which the Missouri waiting period could be compensable on a UCX claim (or the UCX portion of a UCX/UI, UCX/UCFE/UI intrastate, interstate, or combined-wage claim) is where the State waiting period was credited for a week more than 4 weeks after the week in which the individual was discharged or released from Federal military service, as in the case where the individual's initial claim for benefits was not filed until after the expiration of such 4-week period. Note, however, that payment of compensation for the waiting week may not result in the individual being paid a sum greater than 13 times the UCX (or UCX portion of the) weekly benefit amount in any single benefit year.

Q. The MDOLIR contend that it is their interpretation that any of the weeks which are not otherwise ineligible could be used as a waiting week. Assuming an individual had a week or two of accrued leave that was part of the four-week period following the week of their separation, they could still use the third or fourth week as a waiting week. It is also assumed that if an individual was separated from a branch of service on the first day of the week and would otherwise be eligible for that week, the week in which a separation occurred could be used as a waiting week.

A. It is suggested that any of the weeks which are not otherwise ineligible could be used as a waiting week. This is a matter of State law, which we are bound to follow. However, Federal law precludes the payment of UCX benefits before the fifth week beginning after the week in which an individual is discharged or released from Federal military service.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 523-7831 (this is not a toll free number).

Classification—Executive Order 12291

This proposed rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

The proposed rule in this document will not increase the Federal paperwork burden on the private or public sectors under the Paperwork Reduction Act and Executive Order 12291. The reason for such certification is that this proposed rule only implements amendments to an individual entitlement program and will only affect individuals applying for benefits under the Unemployment Compensation for Ex-servicemembers program.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not * * * have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The definition of the term "small entity" under 5 U.S.C. 601(6) does not include States or individuals. Since these regulations involve only the States and individuals, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 614

Labor, Employment and Training Administration, Unemployment Compensation for Ex-servicemembers (UCX), Unemployment Compensation.

Words of Issuance

For the reasons set out in the preamble, Part 614 of Chapter V of Title 20 of the Code of Federal Regulations is amended as follows:

PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

1.-2. The authority citation for Part 614 is revised to read as follows:

Authority: 5 U.S.C. 8508; Secretary's Order No. 4-75 (40 FR 18515).

3. Paragraph (a) of § 614.1 is revised to read as follows:

§ 614.1 Purpose and application.

(a) *Purpose.* Subchapter II of chapter 85, title 5 of the United States Code (5 U.S.C. 8521-8525), as amended by sec. 201 of Pub. L. 97-362, 96 Stat. 1732, provides for a permanent program of unemployment compensation for unemployed individuals separated from the Armed Forces. The unemployment compensation provided for in Subchapter II is hereinafter referred to as Unemployment Compensation for Ex-servicemembers, or UCX. The regulations in this part are issued to implement the UCX Program.

4. Section 614.1(d)(2) is designated § 614.1(d)(2)(i) and a new paragraph (d)(2)(ii) is added as follows:

(d) * * *
(2) * * *

(ii) If the Department believes that a State agency has failed to use, or use in a timely manner, the crossmatch mechanism at the claims control center designated by the Department, the Department may at any time notify the State of the Department's view. Thereafter, the State agency shall take action to ensure that operable procedures for the effective utilization of the claims control center are in place and adhere to. In any case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part had the State used, or used in a timely manner, the crossmatch mechanism at the claims control center designated by the Department, State agency shall take the

steps outlined in paragraph (d)(2)(i) of this section.

5. Section 614.1(d)(4)(ii) is revised to read as follows:

(d) * * *

(4) * * *

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this Part, including any determination, redetermination, or decision referred to in paragraph (d)(2) or in paragraph (d)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

6. Section 614.1 is amended by adding at the end the reference to OMB control number 1205-0163 to read as follows:

(Approved by the Office of Management and Budget under control number 1205-0163)

7. Paragraph (g) of § 614.2 is revised to read as follows:

§ 614.2 Definitions of terms.

(g)(1) "Federal military service" means active service (not included active duty in a reserved status unless for a continuous period of 180 days or more) in the Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

(i) The individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(ii) (A) The individual was discharged or released after completing his/her first full term of active service which the individual initially agreed to serve, or

(B) The individual was discharged or released before completing such term of active service—

(1) For the convenience of the Government under an early release program,

(2) Because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(3) Because of hardship, or

(4) Because of personality disorders or inaptitude but only if the service was continuous for 365 days or more.

(2) This amendment to 5 U.S.C. 8521 applies to individuals separated from

the Armed Forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) on or after July 1, 1981, but only with respect to weeks of unemployment beginning after October 25, 1982. The 1981 amendment to 5 U.S.C. 8521 (sec. 2405 of Pub. L. 97-35) applied for the period from August 14, 1981 to October 25, 1982.

8. Section 614.3 is amended by striking the word "and" at the end of paragraph (c) of such section, by inserting "; and" in lieu of the period at the end of paragraph (d) of such section, and by adding new paragraph (e) to such section to read as follows:

§ 614.3 Eligibility requirements for UCX.

(e) The first week of unemployment for which a payment of UCX is claimed is not a week earlier than the fifth week beginning after the week in which the individual was discharged or released from service.

9. Paragraphs (c) and (d) of § 614.4 are revised to read as follows:

§ 614.4 Weekly and maximum benefit amounts.

(c) *Maximum amount.* The maximum amount of compensation which shall be payable under the Act and this Part 614 to an individual with respect to any benefit year established after separation from Federal military service shall not exceed 13 times the individual's weekly benefit amount (13 x WBA) for total unemployment, and the term "compensation" as used in this paragraph includes all regular, additional, emergency, and extended compensation (as defined in § 614.2(q)) payable to the individual with respect to such benefit year.

(d) *Computation rule.* The weekly and maximum amounts of UCX payable to an individual under the UCX Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal military service and Federal military wages assigned or transferred under this Part to the State had been included as employment and wages covered by that State law, subject to the use of the applicable Schedule of Remuneration and the limitation on the maximum UCX payable as set forth in paragraph (c) of this section.

10. Paragraph (c) of § 614.5 is revised to read as follows:

§ 614.5 Claims for UCX.

(c) *Secretary's standard.* The procedures for reporting and filing claims for UCX and waiting period credit shall be consistent with this Part 614 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" in the *Employment Security Manual*, Part V, sections 5000-5004 (Appendix A of this part).

11. The heading of § 614.6 is revised and paragraphs (a), (d), (e) and (g) of that same section are revised to read as follows:

§ 614.6 Determinations of entitlement; notices to individual and Federal military agency.

(a) *Determinations of first claim.* Except for findings of a Federal military agency and the applicable Schedule of Remuneration which are final and conclusive under § 614.23, the State agency whose State law applies to an individual under § 614.8 shall, promptly upon the filing of a first claim for UCX, determine whether the individual is otherwise eligible, and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCX payable to the individual.

(d) *Notices to individual and Federal military agency.* (1) The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCX or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation. Such notice shall include the findings of any Federal military agency utilized in making the determination or redetermination, and shall inform the individual of the finality of Federal findings and the individual's right to request correction of such findings as is provided in § 614.22.

(2) A notice of claim filing and subsequent notices of monetary and nonmonetary determinations on a UCX claim shall be sent to each Federal military agency for which the individual performed Federal military service during the appropriate base period, together with notice of appeal rights of the Federal military agency to the same extent that chargeable employers are given such notices under State law and practice unless an alternate mechanism is established by the Department of Labor in lieu of such notices.

(e) *Obtaining information for claim determinations.* (1) Information required for the determination of claims for UCX shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but Federal military findings shall be obtained from military documents, the applicable Schedule of Remuneration, and from Federal military agencies as prescribed in §§ 614.21 through 614.24.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCX and to appropriate Federal military agencies shall be consistent with this Part 614 and the Secretary's "Standard for Claim Determinations-Separation Information" in the *Employment Security Manual*, Part V, sections 6010-6015 (Appendix B of this part).

12. Paragraph (i) of § 614.11 is revised to read as follows:

§ 614.11 Overpayments; penalties for fraud.

(i) *Fraud detection and prevention.* Provisions in the procedures of each State with respect to detection and prevention of fraudulent overpayments of UCX shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with this Part 614 and the Secretary's "Standard for Fraud and Overpayment Detection" in the *Employment Security Manual*, Part V, sections 7510-7515 (Appendix C of this part), and provide for timely use of any crossmatch mechanism established by the Department.

13. Section 614.21 is revised to read as follows:

§ 614.21 Findings of Federal military agency.

(a) *Findings in military documents.* Information contained in a military document furnished to an ex-servicemember shall constitute findings to which § 614.23 applies as to:

(1) Whether the individual has performed active service in the Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(2) The beginning and ending dates of the period of active service and "days lost" during such period;

(3) The type of discharge or release terminating the period of active service;

(4) The individuals' pay grade at the time of discharge or release from active service; and

(5) The narrative reason or other reason for separation from active service.

(b) *Discharges not under honorable conditions.* A military document which shows that an individual's discharge or release was under other than honorable conditions shall also be a finding to which § 614.23 applies.

§§ 614.23 and 614.24 [Removed]

14. Part 614 is amended by removing §§ 614.23 and 614.24

15. Section 614.25 is redesignated § 614.23, and is revised to read as follows:

§ 614.23 Finality of findings.

The findings of a Federal military agency referred to in §§ 614.21 and 614.22, and the Schedules of Remuneration issued by the Department pursuant to the Act and § 614.12, shall be final and conclusive for all purposes of the UCX Program, including appeal and review pursuant to § 614.7 or § 614.17.

16. Section 614.26 is redesignated § 614.24, and paragraph (a) of such section is revised to read as follows:

§ 614.24 Furnishing other information.

(a) *Additional information.* In addition to the information required by §§ 614.21 and 614.22, a Federal military agency shall furnish to a State agency or the Department, within the time requested, any information which it is not otherwise prohibited from releasing by law, which the Department determines is necessary for the administration of the UCX Program.

17. A new § 614.25 is added to read as follows:

§ 614.25 Liaison with Department

To facilitate the Department's administration of the UCX program,

each Federal military agency shall designate one or more of its officials to be the liaison with the Department. Each Federal military agency will inform the Department of its designation(s) and of any change in a designation.

18. Appendices A, B and C are added to Part 614 to read as follows:

Appendix "A" to Part 614—Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services

Employment Security Manual (Part V, Sections 5000-5004) *

5000-5099 CLAIMS FILING

5000 Standards for Claim Filing, Claimant Reporting, Job Finding, and Employment Services

A. *Federal law requirements.* Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for:

"Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary may approve."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law provide for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation."

Section 303(a)(1) of the Social Security Act requires that the State law provide for:

"Such methods of administration * * * as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

B. *Secretary's interpretation of federal law requirements.*

1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure: (a) The payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for:

a. Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are

* Revises subgrouping 5000-5004.

able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and

b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such State law.

5001 *Claim Filing and Claimant Reporting Requirements Designed to Satisfy Secretary's Interpretation*

A. *Claim filing—total or part-total unemployment.*

1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly or biweekly, in person or by mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person:

a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year; and

b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

(1) The conditions or circumstances of his separation from employment;

(2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;

(3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirement; or

(4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances:

a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person;

b. Conditions make it impracticable for the agency to take claims in person;

c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment;

d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving

benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediately following his period of partial unemployment so long as he remains attached to his regular employer.

B. *Claim filing—partial unemployment.* Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary full-time hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the circumstances set forth in section A 3, filing by mail must be permitted, and in the circumstances set forth in section A 2 b, filing in person may be required.

5002 *Requirement for Job Finding, Placement, and other Employment Services Designed to Satisfy Secretary's Interpretation*

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency:

1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public employment office most accessible to him; or

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him, in which case the claims personnel in the office in which the claimant files his claim are to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or

only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area; if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel are required to so arrange and coordinate the contacts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or counseling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) His failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee-charging placement facility such as a union or a professional association; and (2) any information which becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

5004 Evaluation of Alternative State Provisions. If the State law provisions do not conform to the "suggested State law requirements" set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated effect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.3.

Appendix "B" to Part 614—Standard for Claim Determination—Separation Information

Employment Security Manual (Part V, Sections 6010-6015)

6010-6019 Standard for Claim Determinations—Separation Information *

6010 Federal Law Requirements. Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . ."

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 Secretary's Interpretation of Federal Law Requirements. The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished

such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 Criteria for Review of State Law Conformity with Federal Requirements

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 Claim Determinations Requirements Designed To Meet Department of Labor Criteria

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be

completed enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. Determination notices

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging the agency may inform the claimant that he has purged the disqualification for a week by notation on his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects¹ his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) There is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week

¹ A determination "adversely affects" claimant's right to benefits if it: (1) Results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

* Revises subgrouping 6010-6019

is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) There is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note: This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) That claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for

dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of lack of work and for which he earns less than his weekly benefit amount or weekly amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits.*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from

his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions.*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains: (i) The several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a deduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanations of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given with his notice of monetary determination.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he

must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages — to — of the — (name of pamphlet or booklet) heretofore furnished to you."

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon

agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the worker will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information to worker.*

1. *Information required to be given.*

Employees are required to give their employers information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to: (a) The name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and

location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, § 601.5.

Appendix "C" to Part 614—Standard for Fraud and Overpayment Detection

Employment Security Manual (Part V, Sections 7510-7515)

7510-7519 *Standard for Fraud and Overpayment Detection*

7510 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration * * * as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 1603(a)(4) of the Internal Revenue Code and section 3030(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure for all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *"

Section 1607(h) of the Internal Revenue Code defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

7511 *The Secretary's Interpretation of Federal Law Requirements.* The Secretary of Labor interprets the above sections to require that a State law include provision for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others, and (2) to deter claimants from obtaining benefits through willful misrepresentation.

7513 *Criteria for Review of State Conformity With Federal Requirements.* In determining State conformity with the above requirements of the Internal Revenue Code and the Social Security Act, as interpreted by the Secretary of Labor, the following criteria will be applied:

A. Are investigations required to be made after the payment of benefits, (or, in the case of interstate claims, are investigations made by the agent State after the processing of claims) as to claimants' entitlement to benefits paid to them in a sufficient proportion of cases to test the effectiveness of the agency's procedures for the prevention of payments which are not due? To carry out investigations, has the agency assigned to some individual or unit, as a basic function, the responsibility of making or functionally directing such investigations?

Explanation: It is not feasible to prescribe the extent to which the above activities are required; however, they should always be carried on to such an extent that they will show whether or not error or willful misrepresentation is increasing or decreasing, and will reveal problem areas. The extent and nature of the above activities should be varied according to the seriousness of the problem in the State. The responsible individual or unit should:

1. Check paid claims for overpayment and investigate for willful misrepresentation or, alternatively, advise and assist the operating units in the performance of such functions, or both;

2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and

3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or noncovered work) and claiming of benefits (including benefit payments in which the agency acted as agent for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are commonly made either by post-audit or by industry surveys. The so-called "post-audit" is a matching of central office wage-record files against benefit payments for the same period. "Industry surveys" or "mass audits" are done in some States by going directly to employers for pay-roll information to be checked against concurrent benefit lists. A plan

A. of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. Are adequate records maintained by which the results of investigations may be evaluated? *

Explanation. To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records also will provide the basis for drawing a clear distinction between fraud and error.

C. Does the agency take adequate action with respect to publicity concerning willful

*misrepresentation and its legal consequences to deter fraud by claimants? **

Explanation. To meet this criterion, the State agency must issue adequate material on claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution in posters placed in local offices are appropriate media for such information.

7515 *Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments.* If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria. *

Signed at Washington, DC, on October 3, 1988.

Roberts T. Jones,
Assistant Secretary of Labor.

[FR Doc. 88-23734 Filed 10-14-88; 8:45 am]

BILLING CODE 4510-30-M

* Revises section 7513 as issued 5/5/50.

* Revises section 7513 as issued 5/5/50.

federal register

Monday
October 17, 1988

Part IV

Environmental Protection Agency

40 CFR Parts 122 and 403

**General Pretreatment Regulations for
Existing and New Sources; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[FRL 3295-4]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is finalizing revisions to the General Pretreatment Regulations (40 CFR Part 403). These revisions will clarify existing regulations, respond to recommendations of the Pretreatment Implementation Review Task Force (PIRT), and conform the pretreatment regulations, where appropriate, to the National Pollutant Discharge Elimination System (NPDES) permit regulations (40 CFR Part 122).

DATES: This regulation shall become effective November 16, 1988. For purposes of judicial review, this regulation is issued at 1:00 p.m. eastern time on October 31, 1988.

ADDRESSES: Comments of a technical nature should be addressed to: George Utting, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record for this rulemaking, including all public comments received on the proposal, will be available for inspection and copying from 8:00 a.m. to 4:30 p.m. at the EPA Public Information Reference Unit, Room 2904, 401 M Street SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: George Utting, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9534.

SUPPLEMENTARY INFORMATION:

I. Background

II. Regulatory Change

A. Pretreatment Standards and Requirements

1. Concentration and Mass Limits
2. Local Limits
3. Combined Wastestream Formula
4. Prohibition Against Dilution

B. POTW Pretreatment Program Requirements

1. Deadline for Program Submission—Newly Required POTW Programs
2. POTW Program Requirements—Remedies
3. Modification of Approved POTW Pretreatment Programs

C. POTW and State Pretreatment Program Approval

1. POTW Pretreatment Program and Removal Credit Application Submission—Approval Authority Action
2. Approval of State Pretreatment Programs—State Regulations
3. Approval Procedures for POTW Pretreatment Programs and POTW Revisions of Categorical Standards

D. Reporting and Compliance Monitoring

1. Baseline Monitoring Report—Deadline for New Sources
2. Measurement of Pollutants
3. Sampling Techniques
4. Annual POTW Reports
5. Signatory Requirements for Industrial User Reports
6. Reporting Requirements—Extension of Non-Categorical Discharges
7. Notification of Slug Loadings
8. 90-Day Compliance Report
9. Industrial User Compliance Reports—Monitoring Requirements
10. Self-Monitoring vs. POTW Monitoring
11. Notification by Industrial Users of Changed Discharge

E. Miscellaneous

1. New Source Criteria
2. New Source Compliance Deadline
3. Net/Gross Calculations
4. Upset Provision
5. Bypass Provision

III. Judicial Review of Provisions Not Amended

IV. Technical Revisions

V. List of Subjects in 40 CFR 403

VI. EPA Documents Cited in This Notice

VII. Executive Order 12291

VIII. Paperwork Reduction Act

IX. Regulatory Flexibility Act

I. Background

On June 12, 1986, the Environmental Protection Agency (EPA) proposed revisions to the General Pretreatment Regulations 40 CFR Part 403 (51 FR 21454). These proposed revisions were intended to achieve several goals. They made several substantive changes to address shortcomings in the existing regulations that had been discovered since the January 28, 1981, pretreatment amendments were promulgated. The proposed revisions also responded to recommendations of the Pretreatment

Implementation Review Task Force (PIRT). PIRT was established, in accordance with the Federal Advisory Committee Act, by the Administrator of EPA on February 3, 1984, to provide the Agency with recommendations on improving implementation on the national pretreatment program. The Task Force, which was made up of representatives of POTWs, States, industry, environmental groups and EPA Regional Offices, arrived at its recommendations through consensus among the members after extensive discussion. The Task Force's Final Report to the Administrator was issued on January 30, 1985. Recommendations were made in the areas of program simplification and clarification, enforcement, resources, and roles and relationships within the national pretreatment program. The recommendations generally focused on the need for guidance, training programs, technical assistance, policy statements and regulatory amendments in these areas.

Finally, the proposed revisions also made several provisions of the pretreatment regulations compatible, where appropriate, with their counterparts in the NPDES regulations (40 CFR Parts 122, 123, 124 and 125). Consistent regulations are generally appropriate because in many cases the logic supporting the NPDES provision is equally applicable in the pretreatment context.

The June 12 notice set a period of 60 days for the receipt of public comments. In response to requests to lengthen the comment period, the Agency extended the comment period, on August 21, 1986, until September 22, 1986 (51 FR 29950).

In all, the Agency received comments from 94 commenters. This group included States, POTWs, industries, trade associations, and environmental groups. The range of comments received was very broad and represented many divergent points of view. Significant comments are addressed below in the discussion of each issue. Additional discussion of comments is contained in the record for this rulemaking.

There were twenty-eight separate issues in the proposed rule. Of these, twenty-six are included in today's final rule. One change omitted from the final rule is a revision of the fundamentally different factors (FDF) provision (40 CFR 403.13). EPA proposed to modify the pretreatment FDF rule to provide POTWs with the opportunity to object

to a FDF request filed by an industrial user (or other interested party) discharging to its system. If the POTW objected, the request would automatically have been denied. However, because of statutory amendments in the Water Quality Act of 1987 directly affecting FDFs, the Agency has decided not to finalize the change as proposed in June 1986. Rather, this change will be considered in a later rulemaking.

The second issue omitted from the final action concerns the application of pretreatment standards and requirements to centralized waste treatment (CWT) facilities. The specific regulatory action proposed on June 12, 1986, was to codify the application of the combined wastestream formula to the calculation of discharge limits for such a facility. In addition, EPA proposed to add specific regulatory language requiring that industrial contributors provide the CWT facility information on the nature of their processes (including relevant production and flow rates where necessary), volume of wastes, pollutant constituents, and any categorical pretreatment standards applicable to the contributor's processes. This information was deemed necessary for the CWT facility to apply the combined wastestream formula, and thus determine effluent limits.

This issue was the most controversial aspect of the June 12, 1986, proposal and clearly received the most comments. Commenters generally focused on two points: The practical difficulties of applying the combined wastestream formula to CWT facilities, and the legal issue regarding the extension of pretreatment standards and requirements to CWTs. Rather than withhold finalization of all of the other regulatory changes until the CWT issue could be resolved, the Agency has decided to omit the regulatory change affecting CWT facilities from today's action and address CWTs and pretreatment requirements in a later rulemaking forum. In the future, additional changes to the General Pretreatment Regulations will be proposed to address the findings and recommendations of the Congressionally-mandated Domestic Sewage Study (see, 51 FR 30166). Reconsideration of the CWT issue will be made part of that effort.

The twenty-six revisions being finalized today fall into five major areas: (1) Pretreatment standards and requirements, (2) POTW pretreatment program requirements, (3) POTW and State pretreatment program approval

procedures, (4) reporting and compliance monitoring, and (5) miscellaneous provisions. The overall impact of the revisions is to make the regulations easier to understand and to improve the implementation of the national pretreatment program generally.

The final revisions do not alter the overall existing regulatory framework, nor do they affect the ability of POTWs or industrial users to comply in a timely manner with existing or forthcoming pretreatment standards and other regulatory requirements. General prohibitive discharge standards, specified in § 403.5 of the regulations, are unchanged. Similarly, categorical pretreatment standards are unaffected by these revisions. As before, most major POTWs are still required to develop and implement local pretreatment programs, pursuant to §§ 403.8 and 403.9, to ensure that non-domestic users of the municipal system comply with applicable standards and pretreatment requirements. Approval of State requests for authority to administer the pretreatment program will continue as before. The basic reporting requirements of the regulations (e.g., § 403.12) remain intact.

II. Regulatory Changes

A. Pretreatment Standards and Requirements

1. Concentration and Mass Limits [40 CFR 403.6(c)]

a. *Existing rule.* National categorical pretreatment standards establish limits on pollutants discharged to POTWs by certain industries. In some cases, the categorical standards set limitations in terms of pollutant concentration. Other standards establish limitations in terms of both concentration and pollutant mass, while, in certain categorical standards, EPA has set only production-based mass limitations. The purpose of such limitations is generally to reflect the use of flow reduction as part of the technological model for establishing the standard.

Production-based limitations, which are established on the basis of production (i.e., x pounds of pollutant per unit of production), are administratively more difficult for the Control Authority to implement than concentration limitations. To test for compliance with a concentration-based standard, a Control Authority need only take a wastewater sample, measure the concentration of the regulated pollutant(s), and compare this result to the standard. For the production-based standards, however, one must also measure the flow of the regulated

wastestream to translate the concentration measurement into a pollutant mass and determine the discharger's production rate at the time of sampling. The most difficult step in determining whether an industrial user ("user", "IU") is in compliance with a production-based standard, according to PIRT, is determining the applicable production rate. This rate will vary over time, and in some industries will even fluctuate daily.

For direct dischargers, the NPDES regulations simplify the implementation of production-based mass effluent limitations guidelines by requiring that the permit limits be based upon a reasonable measure of the actual production. Generally, this should be a long-term average of the facility's production. The permit (or a fact sheet describing the basis for the permit) must specify the production level that was used to derive the permit limit. This process establishes a single mass limit that the permittee must meet, even though production and flows may vary over time. (However, if production and flows change significantly, the permittee must report these changes and the permitting authority may modify the permit accordingly. See, 40 CFR 122.45(b) and 122.62(a)(1).)

The current pretreatment regulations contain no specific provisions relating to translation of production-based limitations into mass or concentration limits. Thus, an industrial user's compliance is determined based upon the categorical standard itself since users must at all times meet the standard. To determine compliance with production-based standards, the production and flow at the time of compliance evaluation must also be determined (because any monitoring results would be expressed in terms of concentration).

In its final report, PIRT stated that POTWs would like to translate production-based categorical pretreatment standards into enforceable mass limits. Many POTWs would also like to convert these mass limits into equivalent concentration limits. As noted above, such conversions simplify compliance evaluation. However, PIRT indicated that POTWs are unsure whether this is allowed under the pretreatment regulations, and, to the extent it is allowed, POTWs are unsure of the methodology to be used and the legal status of the equivalent limits. As explained in EPA's "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula" (1985), the existing regulations allow

Control Authorities to calculate equivalent concentration (or mass) limits as a tool for determining compliance with applicable categorical standards. However, an industrial user's compliance with such equivalent limits does not relieve the user of the legal requirement to be in compliance with the production-based standard itself. Thus, the equivalent mass and concentration limits do not shield the industrial user from direct EPA or State enforcement of the production-based standard. Obviously, this undercuts the benefits of the equivalent limits.

b. Proposed change. Based on PIRT's recommendation, EPA proposed to revise the pretreatment regulations to change the legal status of equivalent concentration or mass limits calculated by Control Authorities from production-based categorical standards. The proposal added a new paragraph to § 403.6(c) stating that these equivalent limits, when properly calculated using procedures included in the proposal, would be deemed pretreatment standards for the purposes of section 307(d) of the Clean Water Act (CWA, The Act) and would be enforceable as such. In addition, the proposal specifically stated that industrial users would be required to comply with the equivalent limits, when established, in lieu of the promulgated categorical standards from which these limits were derived. As a result, industrial users that are in compliance with equivalent concentration or mass limits calculated in accordance with the procedures specified in the proposal would not be subject to direct EPA enforcement actions based on the production-based standard itself. Rather, the equivalent limits would be federally enforceable. The proposed rule would support the efforts of POTWs to establish such limits as part of their approved pretreatment programs.

As part of the proposal, EPA also set forth in the regulations the procedures to be used by Control Authorities to calculate equivalent concentration and mass limits for production-based categorical standards. To convert a production-based standard to a mass limitation, the limit in the standard is multiplied by an appropriate production rate. Consistent with 40 CFR 122.45(b)(2) of the NPDES regulations, this production rate is based not upon the designed production capacity but rather upon a reasonable measure of the facility's actual long-term average daily production (e.g., the daily average during a representative year). This is to ensure that facilities operating below

full capacity are treating their wastewater to the extent required by the CWA's technology-based pretreatment requirements, rather than reducing their level of treatment due to unused production capacity. Such an approach also ensures equity among facilities in the same industry, regardless of their design capacity.

To arrive at a concentration limitation, this mass limitation is further divided by the industrial user's average daily flow rate of process wastewater regulated under the standard. Like the production rate, this flow rate must be based on a reasonable measure of the actual long-term average daily flow of the regulated process wastewater. The Agency proposed that the same production and flow figures should be used for calculating both the maximum daily and maximum monthly average (or 4-day average) limitations. Examples of these calculations appeared in the proposal.

The proposal also required the industrial user to immediately notify the Control Authority if either the long-term production or flow rate changes substantially. Periodic fluctuations should not be reported under this requirement; these variations are factored into the development of the categorical standard. However, significant additions to or reductions in the production level that will represent the facility's production over the long-term must be reported. The Control Authority will then adjust the equivalent mass and concentration limits to reflect the changes.

EPA also proposed to revise the periodic compliance report in § 403.12(e) to require that, for industrial users subject to production-based categorical pretreatment standards, the compliance reports must include the user's actual average production rate for the reporting period. This is to ensure that the Control Authority has up-to-date production information.

c. Response to comments. Seven of the twenty-eight commenters on this provision gave unqualified support for the proposed revision. All seven were Control Authorities who commented that the revision was long overdue, it would help them implement their pretreatment programs and it would ease the burden of sampling by the POTW because an enforceable concentration limit could be employed without the need for data on the production and flow rates of the industrial user during the sampling period. Only one industrial user commented that this change should not

be made and that continued reliance on design capacity should be required. The commenter stated that a facility operating below design capacity when the control mechanism limits mass discharge should not be penalized later when it increases production. This commenter stated that reliance on industrial user notification of an increased production rate along with a request for modification of the pretreatment permit, contract or other control mechanism could not be assured. This commenter also stated that industrial users will not dilute wastestreams in order to comply with pretreatment standards because of the prohibition against dilution.

The Agency does not agree with this commenter. Modification of the control mechanism can be accomplished in sufficient time to avoid a hardship on the industrial user. Industrial users generally have sufficient advanced knowledge of significant changes in production levels to request a permit modification, for example, before the fact. Changed capacity generally should not significantly alter compliance with properly developed equivalent limits because water use will proportionally change as production rates change. Furthermore, as stated in the preamble (51 FR 21454, at 21457):

Consistent with 40 CFR 122.45(b)(2) of the NPDES regulations, this production rate is based not upon the designed production capacity but rather upon a reasonable measure of the facility's actual long-term average daily production (e.g., the daily average during a representative year). This is to ensure that facilities operating below the full capacity are treating their wastewater to the extent required by the CWA's technology requirements, rather than reducing their level of treatment due to unused production capacity. Such an approach also ensures equity among facilities in the same industry, regardless of their design capacity.

The remaining 20 commenters all agreed with the intent of the proposed change, but suggested some minor revisions to the proposal. One comment submitted by this group suggested that the Agency define the terms "significant change in production rate or flow rate," "immediate notification of significant change," and "representative year." One commenter suggested that "significant change in production rate and flow rate" be defined as a change on the order of plus or minus two standard deviations from the quarterly or monthly mean production rate. Another commenter suggested a 10 percent change, and two others suggested a 20 percent change from the long term average rate.

The Agency agrees that a definition of "significant change" is needed, and is relying on the definition provided in the "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Waste Stream Formula" (1985). That document provides that "as a general rule, the average rate is considered to have changed significantly if the change is greater than 20 percent." For the purpose of today's rule, any increase or decrease in production (or flow) rates will generally be deemed significant if the change is equal to or greater than 20 percent of the long term average production (or flow) rate at the facility.

In order to allow some flexibility for POTWs, however, the Agency is not adding this definition of "significant change" to the General Pretreatment Regulations. A POTW may choose to use a different relative change in the production or flow rate as the threshold for notification. Because no two POTWs are exactly alike, an absolute relative change should not be placed in these regulations.

One commenter requested that EPA define the term "immediate notification" of a significant change. The Agency agrees that a definition is needed and, in the interest of consistency between the NPDES and pretreatment regulations, is relying on the NPDES definition for immediate notification of change in production rate found at 40 CFR 122.45(b)(2)(ii)(B)(1) for today's regulation. In response to this commenter's suggestion, EPA is adding the following definition to § 403.6(c): "Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate."

Industrial users often plan long term production quotas or rates at the facility and can easily notify their Control Authority when these changes are significant. This would include long-term (greater than four consecutive workweeks) seasonal shutdowns or production slowdowns, or increased production to meet seasonal demands. However, the change in production or flow rate must be greater than 20% of

the long term average rate before the industrial user must notify the Control Authority.

Finally, six of these commenters requested that EPA define the term "representative year." Several suggested that the Agency should adopt the language in Application Form 2-C for NPDES direct dischargers that allows the use of production information from a one month period, "such as production for the highest month during the last twelve months, or the monthly average production for the highest year of the last five years, or some other reasonable measure of actual operation." Four of the commenters suggested that EPA should include the NPDES regulatory language in a pretreatment definition of representative year. Section 122.45(a)(2)(i) provides that, "The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations."

The Agency agrees with these commenters that a definition of "representative year" is needed and is relying on the description contained in the "Guidance Manual for Production-Based Pretreatment Standards and the Combined Waste Stream Formula" (1985). A representative year would be the highest year of the last five years excluding years in which production was extraordinarily high or after which production lines were discontinued. Another reasonable estimate would be the average annual production rate over the last five years, excluding any extremely high production year or years after which production lines were discontinued. An industrial user could use the high production years if they are the majority of the last five years (e.g., three of the last five), but when only one or two years are high production years then they should not be included in the average production rate. Furthermore, if the industrial user reasonably expects that production will shortly return to the higher rate, then it is justified in using the higher rate in the calculation of the average rate. An example would be where an industrial user has been modernizing its facility and has sequentially shut-down production lines temporarily.

This method of estimating the average production and flow rates is more reasonable because of the way pretreatment standards are developed. EPA selects several individual industrial users from different areas of the United States to monitor and sample within the category being developed. When most

standards are developed, a long term average production rate is established and the relationship between production rate and flow is determined for each user studied. Variability factors are developed using the effluent concentrations or mass loading data obtained during the sampling program at the facilities. This variability analysis produces a determination of the achievable maximum daily or monthly average concentration or mass. The long-term average production rate to be used in developing equivalent limits should thus take into account the normal range of variation in production.

The Agency does not agree that the suggested language from the NPDES Applications Form 2-C should be included in the definition of representative year. This language was removed from the NPDES regulation [40 CFR 122.45(b)(2)] by the final regulation package dated September 26, 1984 (49 FR 37998, at 38054). (See, 49 FR 38029 for a discussion of the change, and 49 FR 38054-76 for the revised form 2-C. The new forms package was published in February 1985 as EPA Form 3510-2C. Previous editions are obsolete.) Therefore, the language will not be added to these pretreatment regulations. The Agency agrees, however, that the language contained in § 122.45(a)(2)(i) should be incorporated into the equivalent limit setting process for pretreatment control mechanisms. This language merely requires that the average production in a representative year be adjusted to reflect the limitation time period. For example, if the categorical standard contains a monthly average limitation, then the production rate for a representative year would be divided by 12 to arrive at an average monthly production level. This language does not need to be incorporated into the regulation, because the Control Authority will do so when writing the control mechanism.

One Control Authority commented that POTWs can easily determine flow rates at industrial users by monitoring user fee bill volumes on a quarterly basis and by noting changes during industrial user monitoring by the POTW. Although these may be available sources of information for Control Authorities, industrial users still need to notify the Control Authority of significant changes in production or flow rates so that the Control Authority may adjust reported volumes for increased flows occurring during any non-scheduled inspection and sampling, or in evaluating semi-annual reports from the industrial user.

One commenter requested that tiered equivalent limits should be allowed where tiered production-based limits are allowed by the pretreatment standard. Tiered equivalent limits are not necessary for any industrial user. If categorical pretreatment standards are set on a tiered basis there may not be adequate information for the Control Authority to determine the long-term average production rate. In that case, the better method of controlling these users would be to use the tiered production standard with sampling for flow rate coupled with information on the actual production rate at the time of sampling. If a Control Authority decides to issue a control mechanism that includes alternate mass or concentration standards for a facility covered by tiered production-based standards, then the Control Authority must ensure that it has adequate long term average production rate information for that facility before issuing the control mechanism.

One commenter noted that pretreatment standards contemplate greater flow reductions than may have been attained traditionally by an industrial user. Therefore, determining the average flow rate based on historical flow data gathered prior to the reduction in flow may lead to a concentration limit that is too stringent for the reduced flow rate. The commenter suggested that an industrial user should be able to use projected flow rate rather than the historical rate to establish the average flow rate. The Agency agrees, in part, with this commenter's suggestion, but shall require that the projected flow rate be based on more than just the design flow for the facility. Information regarding: (a) The facility's expected production rate; (b) the characteristics of its pretreatment system, wastewater, and industrial process; and (c) the number of employees, work stations, and work shifts, for example, might be needed to better estimate the expected long term average production and flow rates for a new facility. Another option would be to continue use of the production based standard for a period of time until sufficient flow rate data are obtained to estimate accurately the average flow rate.

Two commenters suggested that the Control Authority and industrial user should be involved in determining equivalent concentration or mass based limits. Cooperation between these parties is necessary in order to ensure that truly equivalent standards are developed. Establishing the long term average production and flow rates will

require the industrial user to provide information to the Control Authority. Nothing in today's regulation would preclude such cooperative development of the equivalent standards.

An environmental group commented that EPA had failed to comply with two of the "central aspects of the PIRT recommendation: (1) To ensure that, where 'legally' appropriate, POTWs had authority to calculate equivalent mass and concentration limits, and (2) to specify how [the above conversion] could be implemented." This is not an accurate interpretation of the PIRT recommendation on this issue. PIRT questioned: (1) Whether equivalent limits similar to those available to direct dischargers are available to industrial users; (2) how such limits could be implemented; and (3) whether a POTW could establish the production rate and flow rate for a facility and then calculate the equivalent limit by multiplying the production rate by the production-based standard and then dividing by the flow rate. PIRT recommended that the Agency issue a statement informing Control Authorities of the ways in which control mechanisms may be legally used to convert production based standards to equivalent mass or concentration limits. The Agency is responding to this recommendation by promulgating today's regulatory change.

The same commenter also stated that any process established under this proposal should allow public notice of such equivalent limits and public access to the materials on which such equivalent limits are based and should provide for EPA and State oversight of the Control Authority decision-making process. Nothing in today's regulation precludes public access to nonconfidential materials contained in the files of a Control Authority. Under the CWA, the NPDES regulations, and the General Pretreatment Regulations, materials submitted by dischargers are to be made readily available to the public. In compliance with § 403.14 and 40 CFR Part 2, information submitted by an IU to be used in developing an equivalent mass of concentration limit would be available to the public as prescribed by 40 CFR Part 2.

The Agency does intend to review equivalent limit determinations as part of its ongoing POTW pretreatment audit and permit compliance inspection (PCI) programs. These programs are sufficient to ensure that the appropriate equivalent limitations are established and enforced by the Control Authorities. Finally, with respect to the legal validity of equivalent limits, this regulatory

change recognizes equivalent limits, making them legally valid and enforceable.

In addition to the changes to § 403.6(c) discussed above, EPA also proposed on June 12, 1986, to amend § 403.12(e) to require inclusion of current production data in the periodic compliance reports. Several commenters stated that this revision should not be made because it could result in a fluctuation of effluent limits from one reporting period to another. An environmental group, on the other hand, urged that this requirement be maintained and requested that the Agency also include a monitoring and reporting requirement for flow rates.

In view of the discussion above concerning long term production data needed for calculating equivalent concentration or mass limitations, today's final rule differs from the June 12 proposal. The regulation specifies that at facilities for which a Control Authority has established equivalent limits pursuant to § 403.6(c), production data to be reported in the periodic compliance report should be based upon the same measure (i.e., long term average) as the production rate used by the Control Authority in establishing the equivalent limits. This is the production data necessary to determine whether the user is in compliance with the applicable categorical pretreatment standard, since the equivalent limits are enforceable in lieu of the standard itself. For other Industrial Users subject to production-based effluent limits, however, the production data necessary for determining compliance, and therefore the data that must be included in the § 403.12(e) report, is the production corresponding to the period during which the sampling for the report was performed. This same requirement will apply for the 90 day initial compliance report (see discussion in Part II.D.8. below).

d. *Today's rule.* EPA is promulgating § 403.6(c) as proposed with the addition of language to reflect the commenters' concerns regarding the definition of immediate notification. As noted above, § 403.6(c)(7) is amended to read: "Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in

its control mechanism that were based on the original estimate of the long term average production rate."

Regarding § 403.12(e), the final rule differs from the proposal in that it specifies that for industrial users subject to equivalent mass or concentration limits established by the Control Authority under the procedures in revised § 403.6(c), the periodic compliance report must include a reasonable measure of the user's long-term production rate. For all other uses subject to production-based standards, the production rate included in the periodic report is to be the actual production during the sampling period.

A.2. Local Limits [40 CFR 403.8(f)]

a. *Existing rule.* Section 403.5 states when specific local limits must be developed by POTWs. POTWs required under § 403.8 to develop pretreatment programs must develop local limits to implement the general prohibitions against interference and pass-through in § 403.5(a) and the specific prohibitions listed in § 403.5(b). (See, § 403.5(c)(1)).

Section § 403.8(f) sets forth the required elements of an approvable POTW pretreatment program. That section requires a POTW seeking pretreatment program approval to demonstrate that it has sufficient legal authority to enforce local limits developed pursuant to § 403.5(c), but does not explicitly make the actual promulgation of such limits (if needed) a prerequisite to local program approval. Questions have arisen as to whether POTWs required to develop pretreatment programs must develop any needed local limits prior to receiving program approval. In the preamble to the 1981 amendments to the General Pretreatment Regulations, EPA stated that "[local] limits are developed initially as a prerequisite to POTW pretreatment program approval." (46 FR 9417, January 28, 1981). However, the current regulations themselves are not explicit on this point.

b. *Proposed change.* The Agency proposed to revise the regulations to clarify that the development of local limits (or a demonstration that they are not necessary) is a prerequisite to POTW pretreatment program approval (and the continuing legal acceptability of a local program). The proposal added a new paragraph to the local program requirements in § 403.8(f). As a minimum, all POTWs submitting local programs must evaluate the need for local limits, as described above. Where the evaluation indicates that local limits are needed, the POTW must promptly adopt and enforce local limits that will protect the treatment works against

interference, pass-through and sludge contamination. A POTW that proposes to rely solely upon the application of the specific prohibitions listed in § 403.5(b) and categorical pretreatment standards in lieu of numerical local limits must demonstrate that: (1) It has determined that the industrial pollutants of concern will not cause problems at the treatment facility, (2) it has adequate resources and procedures for monitoring and enforcing compliance with the prohibitive discharge and categorical standards, and (3) full compliance with the applicable categorical standards will meet the objectives of the pretreatment program.

Under the proposal, when a POTW is identified as requiring a pretreatment program, the requirement to develop such local limits as are necessary will be reflected in the POTW's approved pretreatment program and incorporated in its NPDES permit under § 403.8(c). The permit will also include a requirement that these limits be updated as necessary. Like all other applicable pretreatment requirements, the failure to develop (and update, as needed) necessary local limits will, of course, continue to be subject to enforcement, either by EPA or an approved NPDES State, as a violation of the POTW's permit.

Any POTW whose program has already been approved without the analysis of the impact of the pollutants of concern and adoption of local limits will be required to initiate an analysis as described above and adopt appropriate local limits under this proposal. This requirement will be incorporated in the POTW's NPDES permit as soon as feasible. POTWs that have previously adopted local limits but have not demonstrated that those limits are based on sound technical analysis, also will be required to demonstrate that the local limits are sufficiently stringent to protect against pass-through, interference and sludge contamination. POTWs which cannot demonstrate that their limits provide adequate protection will be required to revise those limits within a specific time set forth in a permit modification.

c. *Response to comments.* Of the 25 comments received by EPA on this proposed change, only 12 were pertinent to the revision. The remainder merely commented on the need for more or better guidance on how to develop local limits, on whether EPA should have approval of local limits submissions, on the need to define the terms interference and pass-through in the regulations, on the need for local limits in general, and on the need to address those pretreatment programs that were

approved but lack local limits. The intent of the revision was to clarify that the development of local limits is required as a prerequisite for program approval—not to reconsider or invite comment on whether local limits are necessary or how they should be developed and implemented. It should be noted that the revised definitions of pass-through and interference, which had not been finalized when this revision was proposed, were promulgated on January 14, 1987 (52 FR 1586, at 1600). The Agency has also prepared additional guidance for the development of technically based local limits ("Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program" (1987)).

As of March 31, 1987, the Agency had identified 1519 POTWs needing pretreatment programs (45 of which were newly designated). Of the 1519, 1450 (95%) were approved. (If the 45 newly identified programs are removed from the total, 98% of the programs have been approved.) The Agency expects that only a few new programs will be identified in the future. As noted above, existing pretreatment programs will be reviewed during audits to ensure that technically based local limits are in place. Local limits that are technically based are local limits that are developed based upon a site-specific engineering determination, generally utilizing a headworks analysis. (See, "Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program", pp. 1-12 to 1-15 (1987).) An August 5, 1985 memorandum from the Office of Water Enforcement and Permits to the EPA Regional Water Management Division Directors provided guidance as to how the NPDES permits for POTWs will be modified at reissuance to include a requirement to develop technically based local limits if they have not already been developed. The more recent 1987 guidance manual expands upon the provisions of the 1985 memorandum.

In general, 11 of the 13 commenters on this proposed revision agreed that POTWs need to develop local limits prior to submission of their pretreatment programs. However, each of them had comments regarding how this should be done.

Three of these 11 commenters strongly urged EPA to consider the cost of developing local limits when requiring a POTW to develop them. One State Approval Authority indicated it could not fully and immediately implement this requirement due to insufficient

resources. The guidance in the above-referenced August 1985 memorandum provides State Approval Authorities some flexibility in addressing deficient existing programs. The Agency intends that as newly designated programs are developed, local limits will be included in the program submission, while deficient existing programs will have to develop local limits and incorporate these requirements into their programs as soon as feasible.

Two Control Authorities, commenting on this provision, stated that development of local limits by small POTWs should not be required until EPA provides the expertise to develop the local limits for the POTWs. These two commenters also suggested that EPA should do the analysis of the data supplied by the POTW to reduce costs. The Agency does not agree with these commenters because EPA provided initial guidance for local limits development in August 1985, and developed additional, more detailed guidance on this subject in December 1987. The Agency has also made a personal computer compatible software package (Prelim 3.0) available to POTWs at no cost to enable them to develop appropriate local limits. Thus, adequate tools are available, even to small POTWs, to develop local limits. With regard to cost reduction, the greatest cost in developing local limits is the sampling and analysis of influent, effluent, and sludge. These analyses are already performed by the POTW. The commenters' proposal would not alleviate that cost. Furthermore, the POTW, not EPA, is in the best position to evaluate case-specific criteria to determine the appropriate local limits.

One State agency agreed with the proposed change, but stated it would not require local limits where problems have not occurred, or are not expected to occur, at the POTW. The intent of the proposed revision was to require local limits development for pretreatment programs that had, or expect to have, problems with pass-through, interference, sludge quality, or worker health and safety. Under this regulation, POTWs are given an option of describing why local limits are not necessary. Therefore, this commenter's statement that it will not require local limits development where problems do not exist or where problems are not expected to exist complies with the intent of this provision.

Two environmental groups stated that the regulatory language of this provision should be made more explicit by inserting the preamble discussion of the goals and requirements of local limits

development into the regulation. The preamble discussion of the items necessary to develop technically based local limits was meant to further explain the regulation's language. As noted above, the Agency has developed a new pretreatment guidance document on development of technically based local limits. This document will serve to explain the items needed to develop local limits. The Agency will continue to assess the needs of POTWs and will update the guidance as necessary.

One environmental group supported the proposed revision, but stated it was not necessary because the current pretreatment regulatory requirements at § 403.5(c)(1) require POTWs to develop and enforce local limits. This commenter stated that this regulatory language mandates that EPA cannot approve a pretreatment program submission that lacks local limits. However, this new provision is a needed clarification of the existing regulation because it will ensure that POTWs developing new pretreatment programs are clearly on notice that the program submission must include local limits.

One industrial user commented that industries should assist POTWs in determining whether local limits are necessary. This commenter also stated that perhaps a more cost efficient approach would be for industrial users to pay a surcharge to allow the POTW to upgrade its treatment, rather than having the user install pretreatment facilities. Although Control Authorities and industrial users need to work together in running effective pretreatment programs, the decision and supporting documentation on the necessity of local limits is to be made by the Control Authority. Nothing in today's action prevents an industrial user from financially assisting a POTW. However, in determining whether local limits are necessary or what the limits should be, the Control Authority should consider the effects of the discharge of the wastestream into the POTW, including the sewer system and the treatment plant. Problems caused by the interference of a pollutant are not limited to the treatment plant; sewer pipe deterioration, plugging, or explosions could result from wastestreams discharged by industrial users that have not been adequately pretreated.

Two commenters noted that the parenthetical statement "or a demonstration that they are not necessary" which is contained in the preamble, was not placed in the regulation, and suggested that the language be included in the regulation.

Although the intent of the provision, as clearly spelled out in the preamble, was to allow a POTW to make the finding that local limits are not needed, the regulatory language could more clearly reflect this intent. Therefore, today's regulatory language incorporates the phrase, "or demonstrate that they are not necessary." Two commenters were opposed to the proposed revision. One commenter stated that Control Authorities may be unable to demonstrate that local limits are unnecessary because of the broad language in the preamble regarding the need to analyze for pollutants that may cause pass-through or interference at the plant. The Agency does not expect that a POTW will be able to foresee all pollutants that will be discharged into the sewer system by IUs, but a reasonable approach by the POTW is required. The Agency expects that a POTW will evaluate the likelihood that its system will expand to serve more industrial users, or that current industrial users will move out of the system and be replaced by different industrial users. This analysis should be a part of the development of local limits by a Control Authority.

Another commenter stated that local limits are only a small part of a pretreatment program and should not delay the approval of the total program. This commenter suggested that POTWs should be given six to twelve months after program approval to develop local limits. The Agency does not agree with this suggestion. Local limits are one of the most important aspects of a POTW's local program. National categorical standards may not provide enough treatment to protect a POTW from pass-through, interference, or sludge inhibition. POTWs cannot afford to violate their NPDES permits, have influent disrupt or destroy the treatment plant, or have sludge contaminated so that it cannot be handled in the usual way (e.g., composting, land application, or land filling). The Agency expects that the Control Authority will use local limits to prevent such occurrences, and maintain the integrity of the treatment facility.

d. *Today's rule.* EPA is promulgating this change as proposed with the addition of the phrase "or demonstrate that they are not necessary" as discussed above.

A. 3. Combined Wastestream Formula [40 CFR 403.6(e)]

a. *Existing rule.* The combined wastestream formula (40 CFR 504.6(e)) is a method for calculating alternative pollutant limits at industrial facilities

where regulated process effluent is mixed with other wastewaters (either regulated or non-regulated) prior to treatment. As stated in the preamble to the 1981 amendments to the General Pretreatment Regulations (46 FR at 9419), the formula is of primary importance to large, diversified industrial users with multiple processes:

These Industrial Users of POTWs frequently have a number of individual processes producing different wastestreams that are not regulated by the same categorical Pretreatment Standard or are not regulated at all. Many of these integrated facilities have combined process sewers and a number have already constructed combined waste treatment plants. In these situations, the Industrial User often prefers to install, or continue to use, a pretreatment system on the combined stream rather than installing separate parallel systems on each individual stream. A combined wastestream formula permits a facility to mix wastestreams prior to treatment by providing it with an alternative effluent limit for this combined discharge.

EPA wishes to minimize the need for separation of wastestreams and for treatment by parallel systems when comparable levels of treatment can be attained in combined treatment plants. Separate treatment of wastes at an integrated plant can be costly, wasteful of energy, inefficient and environmentally counterproductive. In addition, such an approach reduces the environmental gains resulting from the voluntary treatment of unregulated streams prior to the imposition of regulatory requirements. However, the Agency also recognizes that the countervailing concerns of avoiding the attainment of limits through dilution and ensuring that adequate treatment is provided may sometimes lead to the conclusion that segregation of streams is the only appropriate way to meet applicable pretreatment limits. The combined wastestream formula attempts to strike a proper balance between these considerations. It is the Industrial User's choice whether to combine or segregate its wastestreams. However, if the User decides to combine wastestreams prior to treatment, and at least one of these wastestreams is covered by a categorical pretreatment standard, then alternative limits for all regulated pollutants in the combined wastestream must be calculated using the combined wastestream formula.

b. Proposed change. Where an industrial user combines waste streams prior to treatment, compliance with an applicable categorical standard can be determined either prior to combining the wastestreams or following treatment of the combined wastestream (by applying the combined wastestream formula). Some industrial users have indicated that they would like to be able to switch between monitoring at these two points for purposes of evaluating compliance with categorical standards. The current

regulations are silent on whether this option is allowed.

EPA proposed to add a new paragraph (e)(5) (§ 403.6(e)(4) in today's final rulemaking) to the combined wastestream provision in § 403.6 to clarify the approach to be taken in such cases. Under the proposed rule, an industrial user has an initial choice of monitoring either the segregated wastestream(s) or the combined wastestream and then applying the appropriate numerical limits. If, at some later date, the industrial user wishes to change its initial choice of monitoring points, it may do so only after receiving approval from the Control Authority. This is necessary to enable the Control Authority to verify the applicable limits (e.g., alternative limits calculated using the combined wastestream formula) and ensure that the change in sampling points will not allow the industrial user to substitute dilution (either by non-regulated process water or by "dilution flow" as defined in § 403.6(e)) for pretreatment.

EPA also proposed to add stormwater and demineralizer backwash to the definition of "FD" in § 403.6(e)(1), which refers to streams that are treated as dilute for purposes of calculating alternative limits under the combined wastestream formula. Like the other streams included in this definition, stormwater and demineralizer backwash streams do not generally contain significant concentrations of regulated pollutants.

As with boiler blowdown and non-contact cooling water streams, however, in certain circumstances a stormwater or demineralizer backwash stream could contain a significant amount of a pollutant that could be substantially reduced if the industrial user combined this stream with its regulated process wastestream(s) prior to treatment. EPA proposed that the industrial user could request the Control Authority to classify the stream as an "unregulated" stream rather than a "dilution" stream. The industrial user would be required to provide engineering, production, and sampling and analysis information sufficient to allow a determination by the Control Authority on how the stream should be classified. The Control Authority would have discretion to classify the stream in question as either a "dilution" or an "unregulated" stream.

EPA also proposed to revise § 403.6(e)(3). That section describes the self-monitoring required to insure compliance with alternative limits derived using the combined wastestream formula, and references self-monitoring requirements in categorical pretreatment standards.

However, the categorical standards do not contain such self-monitoring requirements. The Agency proposed to delete existing § 403.6(e)(3) to reflect this fact. In place of the deleted provision, the Agency proposed a new § 403.6(e)(3) that will require compliance with the monitoring requirements in § 403.12(g), which is also being proposed to be amended today (see discussion below).

c. Response to comments. Thirteen commenters responded on the proposal. EPA's responses to these comments are grouped by specific issue below.

1. Notification of changed monitoring location. All three industry commenters on this issue supported the proposal. Two POTWs also submitted comments. One POTW concurred with the proposal to allow a choice of compliance monitoring locations, but stated that POTWs should have a say in where samples are taken for compliance monitoring performed by the POTW. Another POTW found the language in proposed § 403.6(e)(5) "very confusing," and stated that it was not clear whether the reference to a "treated process wastestream" meant a regulated or non-regulated stream. It was also unclear to the commenter what was being combined with this wastestream.

As to the first POTW commenter's concern, EPA does not intend to preempt the Control Authority's ability to determine the point at which it collects samples in monitoring the compliance of an industrial user. Regardless of where the industrial user wishes to conduct self-monitoring, the Control Authority may select its own monitoring location, so long as the chosen location is an appropriate one for determining compliance with the applicable categorical standard(s). Moreover, POTWs with pretreatment programs must have authority to require such self-monitoring and reporting by industrial users as is necessary to assess and assure compliance with pretreatment standards (see, § 403.8(f)(1)(iv)(B)). Such authority should include, at a minimum, the ability to ensure that a sampling location chosen by an Industrial User will provide the necessary data. Some POTWs may also have more extensive authority under State and/or local law allowing them to direct the industrial user to monitor at a specific location. Today's final rule would not limit such authority. It merely provides that for purposes of determining compliance with the federal categorical pretreatment standards, an industrial user combining a process wastestream with other wastestreams prior to

treatment may monitor either the regulated stream(s) separately (in which case the individual categorical standard(s) would be applied) or the combined stream (in which case the combined wastestream formula would apply). The rule does not affect the ability of the Control Authority, under its own authorities, to impose specific requirements on the industrial user regarding monitoring location.

Regarding the second POTW's comments, the term "treated process wastestream" was intended to refer to wastestreams regulated by categorical standards. To clarify this, the term has been changed to read "treated regulated process wastestream" in the final rule. The commenter's confusion as to what the regulated stream was being "combined" with is probably at least partly due to the inadvertent use of the word "of" after "treatment" in the first sentence of proposed paragraph (e)(5). The "of" should have been "with," and has been changed accordingly in the final rule (paragraph (e)(4)). This change clarifies that the regulated stream is being combined with "wastewaters other than those generated by the regulated process," whether they be "regulated" (i.e., covered under a categorical standard), "dilute" under the definition in § 403.6(e), or "unregulated" (i.e., neither regulated nor dilute).

2. "Dilution" definition. Of the six commenters on this issue, three supported the rule as proposed. The others, a POTW, an industry trade association, and an environmental group, expressed opposition to various aspects of the proposal.

The POTW and the industry trade association were concerned about how the proposal would effect stormwater and demineralizer and reverse osmosis backwash streams that may be covered under categorical pretreatment standards. The industry trade association suggested that EPA clearly indicate in the final rule that where these streams have been included as process wastewaters for categorical standards development, they should not be defined as dilute, but instead should be classified as either regulated or unregulated streams, depending on the situation. The POTW asserted that reverse osmosis and demineralizer backwash wastestreams should be considered part of the regulated wastestream for some categories for which they are essential and integral components, and gave as examples of such categories electrical and electronic components, electroplating and metal finishing. In support of its comment, the POTW stated that these wastestreams

contain pollutants similar to those from other regulated processes, but have minimum dilution potential because they are irregular and infrequent.

Both commenters apparently misunderstood the scope of the proposed rule. EPA does not intend to include under the definition of dilute streams in § 403.6(e) wastestreams resulting from application of reverse osmosis or demineralization to process wastewaters. The proposal was intended to apply only to reverse osmosis and demineralizer backwash streams resulting from treatment by the industrial user of its raw intake water (e.g., for use in industrial processes requiring high quality water). Unlike process wastewater, these streams should not contain regulated pollutants in significant amounts. Moreover, in cases where they do, the final rule would allow the Control Authority to classify them as unregulated rather than dilute.

The environmental group stated that the proposal would allow an industrial user to classify stormwater as "unregulated," or not, depending upon the most favorable status of the wastestream to the facility; i.e., for purposes of determining compliance. The commenter recommended that (1) all stormwater be classified as "dilution" for purposes of the combined wastestream formula and control authorities should be encouraged to develop local limits for significant stormwater contamination, or (2) EPA should conduct a rulemaking to determine which stormwater streams should be treated as "unregulated" for purposes of the formula.

Both the proposal and today's final rule state that the Control Authority, not the industrial user, is responsible for determining the classification of stormwater as either "dilution" or "unregulated." The industrial user may request the classification, but the Control Authority is the decisionmaker. At the outset, there is a presumption that the stormwater is dilution for purposes of the formula. Stormwater is to be evaluated, as are all the wastewaters included in the "FD" definition, using the regulatory criteria to determine if the wastestream is to be deemed "unregulated."

Section 403.5 of the pretreatment regulations contains general and specific prohibitions against interference and pass through, and requires POTWs to develop specific local limits to implement these prohibitions. If pollutants found in stormwater introduced to a POTW cause interference and/or pass through, the

POTW already is required by the pretreatment regulations to establish local limits. Additional authority specified in the regulations is not necessary. In addition, EPA has considered contaminated stormwater in promulgating effluent guidelines limitations and categorical pretreatment standards (e.g., iron and steel (40 CFR Part 420); petroleum refining (40 CFR Part 419)).

3. Combined wastestream formula after treatment. Most of the comments on the combined wastestream formula were directed at EPA's clarification, in the preamble to the proposal, of the procedures to be used where treated regulated process wastestreams are combined with other wastestreams. Several commenters expressed reservations about the approach described in the preamble. Moreover, the comments revealed a considerable amount of misunderstanding among the commenters. Therefore, although there was no regulatory change proposed on this issue, it is appropriate to address some of the commenters' concerns and resolve any misunderstandings.

One commenter stated that it preferred to separately sample the industrial user's treatment plant effluent and the end-of-pipe combined stream for determining compliance with categorical standards and local limits, respectively. The commenter seemed to think that this would not be allowed under the approach explained in the preamble to the proposal. In fact, the flow-proportioning method discussed by EPA would not foreclose the commenter's approach, because it applies only where end-of-pipe sampling is being used to determine compliance with categorical standards as well as local limits. Separate sampling of the industrial user's pretreatment facility effluent for categorical standard compliance may generally be used regardless of what other wastestreams might be added further downstream.

Another commenter described a scenario where large industrial users might be pretreating only the concentrated regulated wastes and adding the less concentrated remainder of the regulated wastewaters after treatment. The commenter stated that using the combined wastestream formula at the end-of-pipe sampling manhole allows translation of end-of-process limits (i.e., categorical standards) into end-of-pipe limits, and thereby minimizes the amount of monitoring done by the Control Authority at the industrial user. Again, there appears to be some misunderstanding of the Agency's

preamble explanation in the proposed rule. The flow-proportioning approach (or a more stringent approach) must be used where wastestreams *other than regulated process* wastestreams are added after treatment. Where all streams added after treatment are regulated process wastestreams, the combined wastestream formula may still be used since these added streams must meet the applicable categorical standard(s), regardless of whether they are treated or not. Since there are no unregulated streams being added, the trade-off between obtaining treatment of otherwise unregulated wastewaters and allowing some dilution in certain limited situations, which underlies the combined wastestream formula, is irrelevant.

Another commenter contended that proper use of the combined wastestream formula would produce accurate results for the purpose of determining compliance regardless of whether it is applied before or after treatment. However, as EPA explained in the preamble to the proposed rule, this is not the case. In certain situations, the combined wastestream formula allows a limited amount of dilution. Where the formula is used prior to combined treatment, this dilution is viewed as an acceptable trade-off for treatment of otherwise unregulated wastewaters that is obtained in other situations. This careful balance of competing concerns is upset if unregulated streams are added after treatment, because there is no opportunity to obtain incidental treatment of the unregulated streams. Therefore, EPA disagrees with the commenter's contention.

The same commenter also maintained that the flow-proportioning calculation would increase administrative and data handling burdens for POTWs and industrial users. EPA recognizes that some additional burdens may be experienced by Control Authorities and industrial users that have been using the combined wastestream formula in situations where they should have been performing a flow-proportioning calculation. However, this latter calculation is relatively straightforward and, as discussed above, is necessary to ensure that compliance with categorical standards is not achieved through dilution.

An industry commenter recommended that the approach described in the preamble to the proposal be applied only to new facilities. The commenter asserted that requiring existing metal finishers to meet limits derived using the flow-proportioning calculation where wastestreams are added after treatment

would significantly affect their ability to show compliance. The commenter also argued that the burden of periodically sampling each source at large plants would be enormous while the potential for disrupting the POTW would be minuscule. According to the commenter, another effect of the approach described by EPA would be that some parameters (e.g., cyanide) would be limited to below detectable levels, thus requiring plant-wide source sampling and elimination of the benefit of the combined wastestream formula.

EPA disagrees with the commenter's contentions. First, the prohibition against dilution to achieve compliance with categorical standards applies to existing, as well as new, sources. It would not be appropriate to exempt existing industrial users from this basic rule. Second, while the potential for disrupting the POTW may be relatively small, the net effect of allowing the combined wastestream formula to be used where dilution would result would be increased pollutant loadings to receiving waters, thus contravening the basic goal of the CWA to eliminate the discharge of pollutants to the Nation's waters. Finally, the commenter provided no data to support its assertion that certain pollutants would be limited at below detectable levels. While this may occur in some situations, based upon all the comments received, this does not appear to be a pervasive problem. Moreover, where use of the flow-proportioning calculation would present this or other problems, the solution is to monitor the treated and untreated wastestreams separately, not to allow dilution through the combined wastestream formula.

Another industry commenter was under the mistaken impression that EPA is requiring use of the combined wastestream formula where wastestreams are combined after treatment and the level of a particular pollutant in a nonregulated wastestream exceeds the limit on that pollutant in the applicable categorical standard. This is not the case. Whenever nonregulated wastestreams are combined with treated regulated wastestreams and monitoring for compliance with applicable categorical standards is performed on the combined wastestream, the flow-proportioning calculation described by EPA in the preamble to the proposed rule may be used. In the instance described by the commenter, the combined wastestream formula may also be used, because it would result in a more stringent limit than straight flow-proportioning. The Control Authority has the final say as to

which formula will be required in such cases. For purposes of compliance with federal requirements, however, either formula would be acceptable.

A comment by an industry trade association similarly displayed confusion regarding the correct formula to apply in a given situation. The commenter requested clarification on whether, in a case where the combined wastestream formula may be used (i.e., the pollutant level in an unregulated stream added after treatment is at least at the level allowed in the applicable categorical standard), the flow-proportioning formula may be used instead. As stated above, for purposes of determining compliance with federal standards, the answer to the commenter's question is yes (although the Control Authority may choose to use the combined wastestream formula instead). The "bottom line" is that whatever approach is used must produce limits that are at least as stringent as those produced using the flow-proportioning calculation.

Finally, one commenter requested clarification of what would be considered a "reasonable amount of time" for industrial users to comply with any more stringent limits that might result from Control Authorities applying the flow-proportioning calculation where they had previously (and incorrectly) been applying the combined wastestream formula. The commenter, a federal agency, noted that federal facilities may need to submit budget requests to enable them to meet more stringent limits. Although EPA is sensitive to the commenter's concerns, it cannot provide a generic definition of a "reasonable amount of time." Instead, this will be a case-by-case determination by the Control Authority taking into account such factors as the magnitude of the change in the applicable limit(s) and treatment changes necessary to respond to the change.

d. *Today's rule.* EPA is promulgating the final rule as proposed with two minor modifications. First, in the first sentence of new § 403.6(e)(4), the term "treated process wastestream" has been changed to "treated regulated process wastestream" to clarify that the term refers to wastestreams regulated by categorical standards. Second, the first "of" in the same sentence has been changed to "with" to correct an inadvertent error in the proposed rule.

A.4. Prohibition Against Dilution [40 CFR 403.6(d)]

a. *Existing rule.* The underlying policy of the CWA is to reduce the amount of

pollutants entering the Nation's waters (section 101 of the Act). This policy will not be met if industrial users meet concentration limits by dilution and thereby discharge the same mass of pollutants at a lower concentration. Section 403.6(d) of the current regulations prohibits the use of dilution as a means of achieving compliance with categorical pretreatment standards in place of adequate treatment. It has been EPA's consistent policy that dilution may not be substituted for treatment of pollutants. The General Pretreatment Regulations promulgated in 1978 clearly stated this policy. While dilution may in the short term minimize some water quality problems, it does not reduce the mass of pollutants entering the POTW. The prohibition on dilution is supported by the Act's legislative history and subsequent case law. (See the detailed discussion of the prohibition on dilution in the preamble to the 1981 amendments to the General Pretreatment Regulations (46 FR 9419, January 28, 1981).

b. *Proposed change.* The language of the existing prohibition in § 403.6(d) applies only to the use of dilution to achieve compliance with categorical pretreatment standards. However, the underlying statutory policy of reducing the total mass of pollutants entering waters of the United States is also applicable to other pretreatment standards and requirements, such as more stringent local limits developed under § 403.5(c). To the extent that local limits regulate pollutants that the POTW is not able to effectively treat (i.e., those that pass through the POTW or contaminate the POTW sludge), dilution is not an acceptable substitute for adequate treatment. Therefore, EPA proposed to modify the dilution prohibition to clarify that it is not limited to categorical pretreatment standards. This will more clearly track the statutory intent.

Under the terms of the proposal, industrial users would be prohibited from diluting to comply with local limits. This prohibition will not affect the POTW's development of such limits and its ability to factor in the dilution impact of the domestic sanitary sewage contribution to the POTW. EPA intends that an industrial user will not increase the flow of water into the discharge to assure compliance with the local limit. However, where a local limit allows an industrial user to mix wastestreams, using pre-existing flow rates of non-process wastewater to "dilute" the process wastes, then today's regulation will not restrict such action. However, once the POTW determines its local

limits in accordance with § 403.5(c), the industrial user may not use dilution to meet those limits.

c. *Response to comments.* EPA received comments on this proposed change from 22 commenters. A number of commenters supporting the change stated that the proposal would:

- (1) Recognize what the Control Authority was already doing;
- (2) Strengthen their regulatory control and enforcement;
- (3) Be consistent with sections 307 and 402(b)(8) of the CWA.

Several other commenters requested further clarification of the language in the preamble or regulation, or requested further EPA guidance regarding the prohibition. An industrial user inquired whether the dilution prohibition applied to pollutants (such as methanol) that are hazardous in large concentrations, but also provide a food source for POTWs. This commenter stated that methanol can be sufficiently diluted to a low concentration so that its flammability will be reduced. The dilution prohibition reflects the clear intent of the CWA and the pretreatment regulations that dilution is not a substitute for treatment as a means to comply with the applicable discharge requirements. However, nothing in today's regulation would deter an industrial user from containing this type of pollutant in a holding tank and slowly discharging the pollutant into its wastestream. This is different from using clean water to dilute the pollutant in the wastestream while increasing the total flow from the industrial user.

Several commenters were concerned that POTWs that have developed local limits based on the pollutant characteristics and hydraulic loading of the total flow at the headworks would need to redevelop those local limits based on the amount of process water discharged. These commenters questioned whether a POTW that already accounted for dilution in setting local limits would need to recalculate its local limits after discounting the dilution flow. The answer to this question is no. This regulatory change prohibits dilution as a means to comply with either a categorical pretreatment standard or a properly derived local limit. Another commenter noted that this dilution prohibition should only apply to process wastestreams. The Agency does not agree with this commenter. Many other non-process wastestreams may, if they contain significant levels of pollutants, also need to comply with local limits (e.g., boiler blowdown, noncontact cooling water) and should also be subject to the dilution prohibition.

One commenter suggested that the Agency provide some further guidance regarding the prohibition. This commenter specifically stated that procedures are needed to assist Control Authorities in determining whether dilution is being used by an industrial user to meet a limit. The most effective method of determining whether an industrial user is diluting its wastestream is the industrial user site visit conducted by the Control Authority. Close inspection of floor drains, batch discharge areas, pretreatment systems, and the sewer line can indicate whether an industrial user is using dilution water to ensure compliance with the pretreatment standards. Control Authorities could also review an industry's water use bill to determine whether excessive amounts of water were being used at the facility. Control Authorities may evaluate an industrial user's water consumption against the water consumption noted in development documents for the categorical standard applicable to that facility, or compare similar industrial users within the Control Authority's jurisdiction or in a neighboring jurisdiction. Of course no two IUs are identical, but similarities in size, production rate, and water usage can be useful.

Several commenters requested clarification on whether the combined wastestream formula was needed to determine compliance with local limits. Under Federal regulations, the combined wastestream formula is a means to assess compliance with categorical pretreatment standards. Many Control Authorities have developed local limits to be applied at the end of the pipe from the industrial user and apply to the total wastestream, process and non-process wastewater. In these cases, there is no reason to segregate wastestreams.

One commenter stated that the proposed revision and its accompanying preamble language were unclear. This Control Authority stated that its local limits are enforced as total industrial user facility discharge standards without factoring out domestic waste, cooling water, etc. EPA did not intend for this proposed regulation to change how local limits are developed and implemented at a Control Authority. This provision is being implemented merely to prevent an industrial user from increasing water usage and discharge flow to dilute its wastestream to be in compliance with the local limits.

A commenter opposed to the revision indicated that the broad scope of the prohibition would cover non-toxic discharges which could be adequately

treated by the POTW. The commenter provided an example where a high concentration conventional waste could be adequately treated by the POTW if the wastestream was combined with other low concentration conventional wastes. The commenter stated that under the proposed revision, the high concentration waste would have to be pretreated prior to mixing with the other wastes to comply with the dilution prohibition. The Agency is not convinced by this commenter's arguments and believes the commenter has misinterpreted the regulatory requirement. Conventional pollutants for non-categorical industrial users would be controlled by local limits and the industrial user could commingle the wastestreams prior to discharge, as long as the final wastestream complied with the local limit. If the industrial user was a categorical industry, then the combined wastestream formula would be applied to its total discharge to ensure compliance with the categorical limit. Under either situation, dilution with clean water could not be used to ensure compliance with the appropriate limit.

Two Control Authorities also raised the issue of dilution and pollutants that a POTW could treat. Both stated that by prohibiting dilution to reduce the concentration of conventional pollutants, there may be a greater potential for large slug loadings of the conventional pollutants to the POTW. The Control Authorities were concerned that the POTW might not be able to adequately treat the large slug loadings, but could easily treat the less concentrated diluted flows. The Agency is not convinced that the prohibition should not be required for these pollutants by this description of the situation. Although it is true that a POTW could more easily treat the diluted conventional pollutants rather than the slugs, the increased water flow into the POTW might lead to hydraulic overloading at the POTW that could decrease its removal efficiency or cause discharge of untreated wastes. Furthermore, it is generally easier to treat the higher concentration of conventional wastes than the diluted concentration. Any high concentration wastes discharged by an industrial user will mix in the sewer lines with other wastes and be diluted prior to arriving at the POTW. In addition many POTWs have mass based limits in their NPDES permits as well as concentration based limits. Although the diluted wastestreams may be treated by the POTW sufficiently to be in compliance with the concentration based limit, the

total mass discharged by the POTW may violate the mass based permit limit. Technically based local limits should prevent interference or pass-through at the POTW from slugs of high-strength conventional pollutants.

One industrial user trade group questioned whether any increase in process wastewater flow rate would be prohibited by this regulation. This commenter suggested that the language be changed so that increases in process water flow would be allowed, unless the intention of the IU was to dilute the wastestream. EPA finds the suggested change to be highly unworkable. POTWs and Control Authorities would be hard pressed to discover an industrial user's true intent. The Agency has therefore not made this change. However, nothing in today's regulation would prohibit an industrial user from increasing its process wastewater flow if the facility modifies its process, but this is clearly different from the situation where an industrial user uses clear water to dilute its wastestream to comply with the pretreatment standards.

d. *Today's rule.* EPA is promulgating this change as proposed.

B. POTW Pretreatment Program Requirements

1. Deadline for Program Submission—Newly Required POTW Programs [40 CFR 403.8(b)]

a. *Existing rule.* Under the current regulations, POTWs required to develop pretreatment programs under § 403.8(a) must request and receive approval of such programs within three years of their NPDES permit reissuance or modification to require program development, but not later than July 1, 1983 (§ 403.8(b)). Although the regulations recognize that EPA or States may subsequently require other POTWs to develop programs after this date, the existing rules do not specify a deadline for program submittal or approval for these POTWs.

b. *Proposed change.* EPA proposed to amend § 403.8(b) to establish an outside compliance date for program development and submission where the Approval Authority identifies a POTW as needing a pretreatment program after July 1, 1983. EPA proposed to require program submission to the Approval Authority as soon as possible, but no later than one year after the date on which the POTW was notified by the Approval Authority, in writing, of its responsibility to develop a program. While this time period is shorter than the "up to three year" period authorized for POTWs prior to July 1, 1983, experience indicates that one year is

reasonable for POTWs newly required to develop programs. Moreover, the existing three-year deadline includes receiving approval of the program; the deadline being proposed today applies only to the submission of an approvable program. Based upon the POTWs that have developed programs, EPA has determined that, in most cases a complete program submission can be developed within six to twelve months. Moreover, EPA and the approved pretreatment States have already identified most POTWs that will be required to develop pretreatment programs; those identified in the future will be able to benefit from the work and experience that has taken place since 1978. In addition, it is anticipated that the new programs will be identified over a period of time.

c. *Response to comments.* EPA received several comments regarding the timing for program submission. One State Approval Authority suggested that the regulation should also include a deadline for EPA to review and approve the submission. No such deadline is necessary. EPA does not expect a large number of new programs to be required in the future. Therefore, there will not be a surge of program submissions needing review and approval by EPA in a short time period, and turnaround time on the new programs submitted will be minimal.

Several other commenters stated that the one year development limit was sufficient, but that an Approval Authority should be granted the discretion to extend that time period by two or three years. An extension of the one year time period is not justified. As noted above, the Agency has determined that a complete program submission can be developed within one year. Given the available guidance documents produced by EPA and the experience gained by State Approval Authorities to date, future programs identified by Approval Authorities will easily be submitted within the one year time frame.

Under this regulatory change, Approval Authorities will impose program development requirements on POTWs using the same procedures as for programs previously required. When a new POTW is identified as requiring a pretreatment program, the Approval Authority will modify the POTWs NPDES permit as provided under paragraphs 403.8(e)(1) and (5) to incorporate a compliance schedule that includes a program submission date, progress reports and such other interim dates as are needed to insure timely program development.

d. *Today's rule.* EPA is promulgating the final regulation identical to the proposed regulation.

B.2. POTW Program Requirements—Remedies [40 CFR 403.8(f)]

a. *Existing rule.* POTWs seeking approval of local pretreatment programs must have adequate legal authority to administer the local program. The required minimum legal authorities include the authority to obtain remedies against industrial users that violate pretreatment standards and requirements (§ 403.8(f)(1)(vi)(A)). In addition to having authority to seek injunctive relief, POTWs must be able to impose monetary penalties. The pretreatment regulations do not specify the minimum penalty amounts that POTWs must be able to collect.

POTWs that have legislative power under State law can meet the requirement to obtain monetary penalties by simply passing appropriate legislation (i.e., local ordinances or an equivalent). However, where a POTW does not have the authority to enact ordinances or other local legislation, the existing regulations only require the POTW to enter into contracts with its industrial users. In this manner, POTWs can obtain monetary compensation for breaches of contract which result in losses to the POTW, but liquidated damages are not penalties, as discussed below.

b. *Proposed change.* It is a general principal of contract law that damages for a breach of contract should adequately compensate the non-breaching party for the loss resulting from the breach, but should not be punitive in nature. Where a contract which includes a liquidated damages clause is breached, the compensation to be paid by the breaching party must be reasonably calculated to compensate the non-breaching party for the loss.

Under the pretreatment regulations, liquidated damages clauses in contracts between POTWs and their users must provide for monetary damages that compensate the POTW for any violation of pretreatment standards. However, it is difficult to determine, in advance of a breach, the extent of damage to a POTW caused by the breach and thus difficult to select an appropriate sum to be included in a liquidated damages clause. Furthermore, Congress clearly intended that a violation of pretreatment standards be deterred by the possibility of substantial penalties that are not necessarily tied to measurable damage caused by the violations. (See section 309 of the Act.) Because liquidated damages clauses may not contain penalties, EPA has recognized that

contracts are not an adequate enforcement mechanism.

To require POTWs to have adequate enforcement authority, EPA proposed to delete that portion of § 403.8(f)(1)(vi)(A) that provides for the use of contracts as a mechanism for assuring compliance with pretreatment standards and requirements. The proposed regulation was intended to require all POTWs developing POTW pretreatment programs to pass local legislation enabling them to seek or assess civil or criminal penalties against industrial users in violation of pretreatment standards and requirements. POTWs that do not already have authorization to pass such legislation under State law would have to seek such authority prior to program approval. Those POTWs with approved Pretreatment programs that depend upon contracts for implementation and enforcement of pretreatment standards and requirements would also be required to obtain the necessary authority from the State to enable them to seek or assess civil or criminal penalties against violating industrial users. This authority would have to be obtained within one year of the effective date of this amendment unless the State would be required to enact or amend a statutory provision, in which case the POTW would have two years in which to obtain this authority.

It was not thought that the proposed regulation would have a widespread impact on the national pretreatment program. It appeared to EPA that a relatively small percentage of industrial users are currently being regulated through contracts with POTWs. However, the Agency invited comments on this approach and suggestions for other approaches, such as retaining the option to use contracts, but requiring the City Solicitor (or other appropriate person) to certify that such contracts, and particularly the liquidated damages provisions, were valid under State law.

The proposed regulation was not intended to abruptly discontinue the use of liquidated damages clauses in contracts between POTWs and their industrial users. Where these provisions are currently in use, POTWs would continue to invoke them where a user violates the contract. However, such a contract does not meet the requirements of the revised rule. EPA's intent was to ensure that POTWs required to implement pretreatment programs have adequate authority to impose monetary penalties for all violations of pretreatment standards and requirements, including those that do not cause any measurable damage to the POTW. The proposed change would

merely ensure the use of mechanisms that provide adequate enforcement and remedial authorities.

EPA also proposed another change to the remedies provision of § 403.8(f). Section 403.8(f)(1)(vi) speaks in terms of civil or criminal penalties, but does not contain any guidance as to minimum amounts that POTWs must be able to collect. This has created some inconsistency in setting penalties. Consequently EPA proposed to require that all POTWs with pretreatment programs have authority to impose penalties of at least \$300 per day per violation in civil or criminal penalties. This amount was thought to be consistent with EPA's "Procedures Manual for Reviewing a POTW Pretreatment Program Submission" (1983) and was intended to provide a minimally acceptable deterrent effect. The POTW would provide for larger penalties where appropriate (e.g., where the industrial user has a history of violations, etc.). Of course, by stating this minimum amount in the regulations, EPA in no way intended to limit its (or the States') ability to seek larger penalties in appropriate cases. The \$300 amount was simply intended as a minimum for purposes of the POTW's authority to assess civil and criminal penalties. It was not intended to be used as a defense in an enforcement action in which a larger amount is sought.

In proposing the minimum, EPA did not mean to imply that amount would in all cases be sufficient to deter violations or force compliance by recalcitrant industrial users. In some cases, monetary penalties may need to be coupled with termination of sewerage service or other measures in order to achieve compliance. However, it is important to ensure that POTWs developing pretreatment programs have authority to impose sufficient monetary penalties regardless of whatever other measures might be appropriate in a given case.

EPA solicited comments on this proposal, and also invited suggestions as to other appropriate minimum penalty amounts. The Agency was particularly interested in receiving comments on the alternatives of requiring POTWs to be able to collect at least \$1,000 (per day of violation), and using the same minimum penalty amounts that are required for State NPDES programs in 40 CFR 123.27(a)(3) (i), (ii), (i.e., \$5,000 per day of violation for civil penalties, \$10,000 for criminal fines).

c. *Response to comments.* EPA received 38 comments on this proposal, of which twenty-one were submitted by

POTWs. Other commenters included five states, four trade associations, five corporations, and three environmental groups.

Most commenters addressed issues concerning the requirement of POTW authority to seek or assess monetary penalties. Some commenters, however, apparently misread what was proposed. Thus, some commenters were concerned that POTWs would be required to have authority to directly assess penalties. There also appeared to be some confusion as to whether the proposed regulation would eliminate all use of contracts by POTWs and thereby undermine existing agreements between POTWs and their users.

In proposing this amendment to the existing rule, the Agency stated that it did not anticipate that this change would have a widespread impact on the national pretreatment program. The Agency believed that only a small percentage of industrial users are currently being regulated through contracts with POTWs. The comments received in response to the proposed rule did not dispute this opinion. Nevertheless, POTWs that lack authority to seek or assess monetary penalties will be affected by today's rule. Therefore, it is important that POTWs that depend upon various contractual arrangements for implementation of their programs do not misread the purpose or effect of this regulation.

The existing rule at the time this regulation was proposed required those POTWs without authority to obtain legislation to seek or assess damages to enter into contracts with their industrial users which would provide for liquidated damages for violations of pretreatment standards and requirements. This use of liquidated damages was intended to be an alternative means of assuring compliance on the part of industrial users with the POTW's pretreatment program.

The Agency has since recognized that the use of liquidated damages for the imposition of penalties is not enforceable as a matter of contract law. Therefore, the Agency proposed to eliminate the use of liquidated damages as satisfying the minimum legal authority required of POTWs. Among the few commenters who addressed this issue, several commenters agreed that such clauses were not punitive in nature and thus not adequate as an enforcement mechanism. None of the commenters asserted that the use of liquidated damages for the imposition of penalties was a legally sufficient enforcement mechanism.

Some commenters adopted EPA's suggestion that certification of the validity of such penalty clauses under state law by a city solicitor or other public official might be a workable alternative. One commenter stated that certification would remedy the problems associated with the use of contract penalties and be a less drastic approach than imposing a requirement that all POTWs have penalty authority. None of the comments cited any precedent for this approach, however. One regional POTW admitted that it was unable to certify that the provisions in question would be enforced under all circumstances. EPA agrees with the commenter who asserted that certification is not acceptable as a substitute for authority to seek or assess penalties because: (1) Certification would not provide criminal enforcement, and (2) because contract law prohibits the use of liquidated damages for the assessment of penalties, an attorney general's statement to the contrary would have little practical effect.

The majority of commenters took the position that POTWs should be required to have penalty authority, and most of the POTWs who commented indicated that they already had some degree of authority to seek or assess penalties. Commenters who opposed the proposed changes expressed concerns that to require POTWs to obtain the requisite penalty authority might jeopardize the ability of POTWs to continue to operate approved pretreatment programs, primarily because of difficulties associated with obtaining the necessary enabling legislation under state law. Some of these commenters expressed the concern that, if the effort failed, contracts between industries and POTWs might have to be terminated. These commenters questioned whether it made sense to upset a successful POTW program in order to implement this regulation.

A few of the commenters who opposed the change felt that the present mechanism was working effectively, without the need for requiring POTW penalty authority. Two commenters took the position that termination of services or revocation of permits present an alternative deterrent to monetary penalties that is sufficient to compel compliance with contract provisions by POTW users. One commenter stated that the municipality's self interest in protecting its treatment works and in preventing unnecessary degradation of the quality of its effluent was the best assurance that appropriate and effective concessions would be extracted from a user before it was allowed to use the POTW's services. Another commenter

stated that where an existing POTW pretreatment program had demonstrated adequate enforcement of categorical and local standards without levying civil or criminal penalties, there would be no requirement for imposition of fines.

Although the proposed rule stated that all POTWs should have the authority to assess monetary penalties, what was intended was that each POTW should have the authority to seek or assess penalties. This was in keeping with the Agency's own penalty authority at the time these regulations were proposed. The legal authority contemplated by the rule, similar to that required of State agencies under the NPDES regulations, was that a POTW should have the power to assess or sue to recover in court civil penalties or criminal penalties (of course, POTWs may have both civil and criminal authority) (*cf.*, 40 CFR 123.27(a)(3) (NPDES State required to have authority "[t]o assess or sue to recover in court civil penalties and to seek criminal penalties * * *"). To avoid further confusion in this regard, the final rule has been amended to clearly state that all POTWs shall have authority to seek or assess civil or criminal penalties.

In proposing this rule, EPA did not intend to suggest that POTWs should void all contracts or that they should do away with all contractual mechanisms concerning enforcement by POTWs. One state recommended that all reference to contracts as an acceptable control mechanism be deleted because they are seldom as effective a control mechanism as a permit and are difficult, time consuming and expensive to negotiate. However, the rule was merely intended to eliminate the use of liquidated damages as an alternative to POTW authority to seek or assess penalties. POTWs may continue to employ contract mechanisms for other purposes (e.g., to enable POTWs to enforce compliance through contracts with neighboring jurisdictions). Moreover, POTWs should continue to invoke such provisions when a user violates the contract, even under today's regulation. Today's regulation establishes the minimum legal authority which a POTW must have in order to operate an approved pretreatment program.

In response to the principal concern of those opposed to the proposed rule (that some POTWs may encounter substantial difficulty in obtaining the requisite authority), it is EPA's position that, where a POTW lacks authority to seek or assess civil or criminal penalties, effective administration of the POTW's program is substantially impaired. Such enforcement power is a

basic feature of an effective pretreatment program without which a POTW program does not merit approval. Concerning POTW pretreatment program requirements generally, § 403.8(f) states, *inter alia*, that a POTW "(1) [S]hall operate pursuant to legal authority * * *, which authorizes or enables the POTW to apply and to enforce the requirements of secs. 307(b) and (c), and 402(b)(8) of the Act [concerning pretreatment standards and compliance therewith] and any regulations implementing those sections." (Emphasis added.) EPA does not now intend to relax this minimum requisite legal authority for approval of a POTW pretreatment program where it lacks the minimum authority necessary to compel compliance with its pretreatment program merely in order to allow certain POTWs to continue to operate approved programs.

The revised rule provides that POTWs which are prohibited by state law from seeking or assessing fines for violations will have two years in order to obtain the necessary changes in state law which would enable them to impose such penalties and to implement such penalty authority. Two years is sufficient time to allow states and POTWs to make the necessary changes in their laws and regulations to enable POTWs to continue to operate approved pretreatment programs without disrupting their operations. One POTW stated that the proposed penalties were contrary to its state constitution, but did not provide information on the specific constitutional provision. No such prohibition was identified in a review of that State's constitution. States with an interest in having approved POTW pretreatment programs will enact the necessary enabling legislation for POTWs to have at least this minimal authority to enforce compliance with POTW programs.

Some POTWs commented that they did have authority to seek fines through local courts and requested clarification whether such authority fulfilled the requirement of the revised regulation. Other commenters sought clarification as to whether allowing state environmental protection agencies to impose penalties on a POTW's behalf was acceptable as an alternative. The language in the preamble for the proposed rule was not sufficiently clear on this issue, but the final rule makes it clear that a POTW must have authority either to directly assess penalties or to seek civil or criminal penalties through local courts. The rule does not impose a mandatory administrative penalty authority requirement, but only requires

that a local ordinance or other local law imposes penalties for noncompliance by POTW's industrial users. However, the Agency's position is that other alternatives, including that of state agencies acting on behalf of POTWs, are not acceptable. The POTW itself must have the authority to seek or assess civil or criminal penalties.

In response to those commenters who favored termination of services and revocation of permits as alternatives to POTW penalty authority, EPA's position is that these are extreme measures and that it is therefore questionable whether such measures would be undertaken by a POTW except under extraordinary circumstances. One POTW stated that it used these measures as its primary enforcement authority. Another POTW commented, however, that disconnection of water service was not politically feasible and plugging of sewer lines without water service disconnection could create health problems. Because termination of service does not have the flexibility of less extreme civil and criminal penalties, such measures are not adequate primary enforcement mechanisms as required by § 403.8(f)(1). POTWs are required to have authority, for instance, under § 403.8(f)(1)(vi)(B), to immediately halt or prevent any discharges of pollutants which pose an immediate threat to the health or welfare of persons, to the endangerment of the environment, or to interfere with the operation of the POTW. Of course, such measures as revocation of permits and termination of services are vital complementary enforcement tools which should be utilized in addition to normal enforcement mechanisms.

A number of the commenters focused on problems presented by extrajurisdictional users and multi-jurisdictional concerns. Some of the POTWs who responded with such concerns apparently do have the power to assess penalties within their jurisdictional boundaries, but either have extra-jurisdictional users in their system or are contemplating the possibility of such a contingency and lack the authority to directly assess penalties against extra-jurisdictional users. Some POTWs went into the details of their present multi-jurisdictional arrangements. One municipal POTW, for instance, described its contractual arrangements with its suburban communities which provide that each suburban community is required to have its own ordinance which provides for civil or criminal penalties which, by virtue of its

delegation agreements, the POTW may seek to impose.

Various arrangements may be necessary to insure compliance by extra-jurisdictional users. While multi-jurisdictional concerns are valid, the Agency has discussed them in the past and has issued guidance to resolve the difficulties presented by them. (See, e.g., "Guidance Manual for POTW Pretreatment Program Development", pp. 3-9 to 3-10 (1983); "Procedures Manual for Reviewing a POTW Pretreatment Program Submission", pp. 2-13 to 2-14 (1983).) Due to the unique circumstances of each multi-jurisdictional situation, problems on this type ultimately must be resolved on a case by case basis. For purposes of today's regulation, it is sufficient to emphasize that a POTW must have penalty authority which will enable it to directly enforce compliance with the terms of its pretreatment program with all of its users.

In addition to its proposal to require that POTWs have penalty authority in order to operate approved pretreatment programs, EPA proposed to set a minimum penalty authority for POTWs of \$300 per day of violation. EPA also solicited comments on alternative amounts of \$1,000 per day and the amounts required for state NPDES programs in 40 CFR 123.27(a)(3)(i), (ii). While most of the commenters supported some minimum amount, there was again some confusion as to what was proposed. Some commenters mistakenly thought that the proposed rule called for a minimum penalty amount to be imposed by POTWs for all violations. Thus, some commenters stated that it was inconsistent with other penalty provisions for EPA to set a minimum penalty amount for POTW pretreatment programs. One commenter noted, for instance, that section 309(d) of the CWA sets maximum penalties but not minimum penalties. Another commenter thought it was inappropriate for EPA to set minimum penalties regardless of the nature or extent of the violation.

The Agency would like to clarify that this provision is intended to require that each POTW have the authority to seek or assess penalties up to a certain minimum amount. Such minimum penalty authority will allow a POTW to seek or assess penalties less than the stated figure, but will ensure that the POTW has adequate authority to penalize serious violations. The minimum penalty authority proposed was for at least \$300 per violation per day. Today's rule requires that each POTW have a minimum penalty

authority of at least \$1,000 per violation per day.

One trade association commented that a minimum penalty was not within EPA's authority because the Agency lacks explicit authorization similar to that of section 402(b)(7) of the Act, which requires state NPDES programs to include adequate penalty authority to enforce compliance. Another commenter opposed to minimum penalty amounts took the position that any minimum penalties should be set by states or municipalities. Another commenter opposed the imposition of a minimum penalty amount because the minimum was not necessary due to the fact that EPA already uses a minimum figure as a criterion in reviewing and approving POTW pretreatment program submissions. It was not clear from these comments whether these commenters opposed a requirement of a minimum penalty amount or a minimum penalty authority. In either event, the Agency was not persuaded by these comments that EPA does not have the authority to require that POTWs have a minimum penalty authority. It is the Agency's position that it is within the scope of EPA's authority to require such authority for POTWs and that this requirement comports with sections 307 and 402 of the CWA.

A principal issue of concern to most commenters was the amount of penalty authority to be required by today's rule. Some POTWs indicated that they had lower penalties already in place and asked that EPA lower the minimum amount. Other POTWs indicated that they had maximum penalties of \$300 and asked that EPA not exceed this figure as a minimum amount. Some commenters expressed the opinion that \$300 was a reasonable minimum and a sufficient deterrent. One POTW indicated that it intended to raise its maximum penalty to \$1,000 per day, but that to raise the penalty any higher might create a conflict with the State's criminal law concerning misdemeanors and felonies. This commenter took the position that \$1,000 per day is quite sufficient in light of stiff federal fines under section 309 of the CWA.

In determining what amount to set as a minimum amount for civil or criminal penalties, the Agency has considered the comments of POTWs with such limitations on their penalty authority. It is precisely because there may be such limitations on a POTW's penalty authority under state law that the Agency has allowed two years for POTW's without sufficient authority under their enabling legislation to obtain the necessary statutory authority and to

amend their regulations accordingly. Most of the commenters who opposed increases in their penalty authorities appeared to be more concerned about the impact that this revised rule would have on their present penalty authority than whether such increases would have a greater deterrent effect on potential violators of their pretreatment program. A POTW's legal authority should be an effective deterrent to violations by a POTW's industrial users. One commenter, a waste treatment facility, stated that a maximum penalty of at least \$300 per day is inadequate because it does not approach the enforcement liability for a direct discharger and, therefore, provides a discharger with "enforcement insulation." In proposing a \$300 minimum, EPA did not intend to limit the penalty authority of POTWs to that figure, but rather intended to achieve a minimally acceptable deterrent effect and to reduce confusion and inconsistency in setting penalties.

Commenters who saw no need for POTW minimum penalty authority because of the stiff state and federal penalties set forth in section 309 of the CWA should understand that POTWs need to have such enforcement authority because they serve as the first line of enforcement. This is what the CWA and the national pretreatment program requires.

In promulgating its final rule, EPA has decided to establish a minimum POTW penalty authority of \$1,000. In so doing, the Agency relies on comments which indicated that the proposed \$300 amount was inadequate to achieve the objectives sought to be achieved by the Agency. A number of commenters supported a minimum penalty authority of \$1,000 or greater and some commenters supported implementation of the NPDES amounts. The Agency was persuaded by comments such as that of one POTW that the proposed \$300 amount was insufficient to deter violations and ensure compliance. This commenter recommended that the penalty be increased to a minimum of "\$1,000 and preferably higher." The POTW cited above recommended implementation of the NPDES amounts. An environmental group stated that, since the CWA and the NPDES program allow the collection of up to \$5,000 per day of violation, for civil fines, \$300 falls far short. This commenter recommended a minimum penalty authority of at least \$1,000 per day. Another commenter cited section 402(b)(8) of the CWA to the effect that \$300 was far too small to "assure compliance with * * * pretreatment standards by each source."

One commenter stated that the Agency had an explicit directive from Congress to make pretreatment standards as stringent as BAT standards for direct discharges and expressed its concern about the inequity which might be created because of differences between the penalties assessed for violations by direct dischargers and those assessed for violations by POTW users. This commenter added that a penalty authority of \$300 per day is unreasonable on its face because it is too low to enforce compliance with categorical standards. EPA recognizes this problem and agrees that the CWA requires equity between pretreatment standards and standards for direct discharges. The CWA does not require equivalent penalties, however, and thus today's action addresses the problem raised by this commenter by setting the minimum penalty authority for POTWs at \$1,000 per day for violations by industrial users.

d. Today's rule. The final rule incorporates one change from the rule as proposed. It requires all POTWs with approved pretreatment programs to have the authority to seek or assess civil or criminal penalties for violations of pretreatment standards and other requirements by POTW users. It also sets a minimum penalty authority for all approved POTW programs of \$1,000 per day for each day that an industrial user is in violation of the POTW's pretreatment program.

B.3. Modification of Approved POTW Pretreatment Programs [40 CFR 403.18]

a. Existing rule. A POTW seeking approval of a POTW pretreatment program must submit a program containing the information specified in § 403.9(b). This submission must include a statement by the POTW's legal representative identifying the legal authorities and procedures under which the POTW plans to operate the program. It must also contain a copy of all relevant legal authorities, a description of the POTW's organization with respect to program administration and a description of available resources.

When EPA or the State approves the program, conditions requiring implementation of the program are incorporated into the POTW's permit (*see*, § 403.8(c)). The POTW is then required to operate the program in compliance with applicable regulations, the approved program submission and any other conditions incorporated into the permit. However, changing conditions at the POTW may warrant changes in the operation of the program. These changes in program operation

may result in a program that differs from that described in the approved program submission and required to be followed by the permit conditions. Changes that may require program modification include the addition of new industrial users, new connections with outlying jurisdictions, the establishment of new water quality standards, the use or new treatment techniques or sludge use or disposal methods, changing resource conditions, a desire by the POTW to modify its control mechanism or its inspection and monitoring program, detection of new pollutants in the POTW's influent, and a finding of deficient legal authority. The current regulations, however, contain no specific provisions on when or how POTW pretreatment programs should be modified to reflect such changes.

b. *Proposed change.* EPA proposed to add a new § 403.18 establishing procedures and criteria for modification of approved programs. This section was intended to track the program approval process. Under the proposal, either a POTW or the Approval Authority could initiate the program modification process to reflect changing conditions at the POTW. This was to ensure that these changing conditions are fully considered by the Approval Authority just as existing conditions are fully considered prior to initial program approval. Moreover, the amendment was to ensure that the program remains enforceable and that changes do not undermine the effectiveness of the approved program.

To modify its pretreatment program under the proposed rule, a POTW was required to submit to the Approval Authority: (1) A statement explaining why the program modification is being sought; (2) a modified program submission indicating those aspects of the program submitted by the POTW pursuant to § 403.9(b) at the time the POTW initially requested POTW pretreatment program approval that would be affected by the requested program modification (including the legal authorities, program description, or resource commitments); and (3) any other relevant documents the Approval Authority determined to be necessary under the circumstances, including, for example, any supporting technical documents. Where the Approval Authority initiates the modification, it might request the POTW to submit any necessary information, including the items listed above.

Under proposed § 403.18, all program modifications were to be approved by the Approval Authority. After the POTW submitted modification request,

the Approval Authority was to review the submission to determine whether the program modification was consistent with the local program requirements of § 403.8(f). Upon determination by the Approval Authority that the program modification was substantial, the review and approval was to be in accordance with the procedures in § 403.11(b)-(f), including adequate public notice. It would be administratively impossible to use these full procedures for all program modifications. Therefore, the proposal provided that for all modifications other than those determined by the Approval Authority to be substantial, the Approval Authority was not required to follow these procedures, but could act on the request without notice. Under the proposed rule, substantial modifications were those affecting the fundamental operation of the program. The proposed rule listed four examples of substantial modifications: (1) Changes to the POTW's enforcement authorities (e.g., remedies available for violations of pretreatment standards and requirements by industrial users); (2) changes to local limits contained in municipal ordinances; (3) changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii); and (4) changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.). The Approval Authority would determine whether other modifications were substantial on a case by case basis. Criteria to be considered included: (1) Whether the changes would have a significant impact on the operation of the program, (2) whether the change would result in an increase in pollutant loadings at the POTW, and (3) whether the change would impose less stringent requirements on industrial users of the POTW. Where the change met one or more of these criteria, the modification would be considered substantial. EPA solicited comments on these criteria and on what other substantial modifications, if any, should be identified in § 403.18, as well as any other comments on the proposed approach.

The procedures for review by Approval Authorities of substantial modifications under the proposed rule (§ 403.11(b)-(f)) were identical to the procedures for approving local programs and provide for public notice and comment on the proposed modification (and an opportunity for a hearing). Significant changes to an approved program, like program approvals, are likely to be of interest to the public and regulated community and should only be

acted on after the public has been notified and had an opportunity to comment on the changes. Moreover, public notice and comment enhances the enforceability of any modified or new provisions that are subsequently approved. The program modification provision is consistent with EPA regulations governing State NPDES program revisions (40 CFR 123.62). The public notice requirement for substantial modifications is also consistent with the encouragement of public participation, which is a fundamental policy of the Act (section 101(e)).

The proposed rule provided that modifications to POTW pretreatment programs become effective upon approval by the Approval Authority. Notice of approval of substantial modifications must be published in the largest daily newspaper within the jurisdiction(s) served by the POTW. Notice of approval of non-substantial program modifications might also be given by such publication, or by a letter from the Approval Authority to the POTW, a copy of which the POTW would send to its industrial users. This procedure is identical to the equivalent process in the NPDES regulations for State program revisions. As with State program modifications, POTWs were to continue to operate their original approved program until a modification is approved by the State or EPA.

Under the proposed rule, program modifications were to be incorporated into the POTW's NPDES permit, because the permit contains conditions based upon the original program. For substantial modifications, the permit was to be modified as soon as possible after approval of the modification. Since these modifications would already have been subject to the public notice requirements of § 403.11, a second round of public notice and comment would not be required when the POTW's permit was modified to incorporate the program changes. Therefore, EPA also proposed to allow the incorporation of substantial POTW pretreatment program modifications into a POTW's NPDES permit to be carried out as a minor modification under 40 CFR 122.63 of the NPDES regulations. Alternatively, the Approval Authority might conduct concurrent program and permit modification, thus combining the public notice and comment process. (Many Approval Authorities have adopted this approach for local program approvals.) For non-substantial program modifications, the proposed rule provided that these were to be incorporated into the POTW's permit

when it is next reissued or modified for any other reason.

The procedures proposed by EPA would have required all POTW pretreatment program modifications to be approved prior to adoption and implementation by the POTW. However, the Agency recognized that some modifications (e.g., minor changes to the POTW's data management system) are so minor that the effort required to review and approve them might outweigh their significance with respect to the operation of the POTW's program as a whole. In light of this, EPA sought to consider alternatives to the approach being proposed that would allow the POTW to make certain changes in the operation of its pretreatment program without receiving prior approval from the Approval Authority. First, the Agency could specify in § 403.18 all modifications for which the POTW would not be required to obtain prior approval. This approach would require an exhaustive listing of non-substantial modifications. Another approach would be to specify substantial modifications (as in the proposal) and provide additional criteria (such as those outlined above) for determining when a modification is substantial, and require prior approval only for changes specified as substantial or meeting these criteria. This approach would leave to the POTW the determination of whether a given change (other than one specified as substantial) met the criteria for being a substantial modification. EPA solicited comments on these alternative approaches. In particular, the Agency requested detailed comments regarding which specific modifications should be identified as not requiring prior approval under the first approach.

c. Response to comments. This issue generated a relatively large number of comments, the majority from POTWs. A number of States also commented on the proposal. In addition, comments were received from two industries, a trade association, and an environmental group. Two commenters supported the provision as proposed. Of the other commenters, only two expressed opposition to the idea of establishing regulatory procedures and criteria for modifications of POTW pretreatment programs.

Most of the commenters opposed the requirement that all program modifications receive prior approval from the Approval Authority on the ground that this would present a significant obstacle to continuous program improvement and would impose an unnecessary time burden on the POTW and Approval Authority.

Numerous suggestions were offered as to which modifications should require prior approval. Several POTWs preferred the alternative, mentioned in the preamble to the proposal, of requiring prior approval only for "substantial" modifications, and defining "substantial" to include certain identified modifications and others meeting specified criteria, with this later determination to be made by the POTW. A number of POTWs suggested requiring prior approval only for modifications that make applicable limits and other requirements less stringent or otherwise relax or weaken the approved program. A State commented that deletion of significant industrial users identified in a POTW's original program submission should be considered a substantial modification requiring Approval Authority approval. Commenters also identified several modifications for which, they argued, prior approval should not be required, including: (1) Changes in administrative procedures that comply with the federal pretreatment regulations, (2) increases in budgets, equipment and personnel, (3) changes to local limits, and (4) changes in response to changes to the federal regulations. An industry trade association recommended that the criteria for substantial modifications requiring prior approval be expanded to include changes that would result in more stringent requirements being imposed on industrial users.

EPA agrees with these commenters that prior approval of all program modifications is impracticable and unnecessary, and is modifying the final rule to require prior approval only for "substantial" modifications. The Agency further agrees with those commenters who supported the alternative of identifying certain specific modifications as "substantial" and providing additional criteria for determining, on a case by case basis, whether other modifications are "substantial." The final rule has been modified accordingly. Under the rule, prior approval is required for the specific modifications identified as "substantial" and for other modifications meeting the enumerated criteria. The list of identified "substantial" modifications has been expanded from the four in the proposal to include the following additional modifications: (1) Changes to all local limits (not only those contained in ordinances), which result in less stringent local limits, (2) changes to the POTW's legal authorities (in addition to changes to the POTW's enforcement authorities), (3) a decrease in the frequency of self-monitoring or reporting

required of industrial users, (4) a decrease in the frequency of industrial user inspections or sampling by the POTW, (5) changes to the POTW's confidentiality procedures, (6) significant reductions in the POTW's program resources (including personnel commitments, equipment, and funding levels), and (7) changes in the POTW's sludge disposal and management practices.

EPA does not agree with the commenter who recommended classifying deletions of significant industrial users identified in a POTW's original program submission as a substantial modification. Such deletions are presumably based upon the fact that the industrial user no longer discharges to the POTW, and would therefore generally not be expected to have a significant impact on the operation of the POTW's program. However, where there would be such an impact, the deletion would meet one of the criteria for substantial modifications and the POTW would be required to treat it as such. Moreover, if in response to the deletion the POTW wishes to make the remaining industrial users' local limits less stringent, this would meet another of the criteria and the change would be considered substantial.

EPA also does not agree with the commenter who recommended that the criteria for substantial modifications requiring prior approval be expanded to include changes that would result in more stringent requirements being imposed on industrial users. The commenter's concern appears to be that unless these changes are included in the criteria, industrial users will not have an adequate opportunity to participate in changes having a major impact on their operation. However, federal law does not prohibit POTWs from making their programs more stringent than when they were approved, and adequate protection of industrial users' due process rights can be addressed at the local level. Users should already have ample opportunity to be heard in the context of individual permit actions, ordinance amendments, and other local proceedings affecting them.

Under today's final rule, the determination of whether a particular modification not included on the list of "substantial" modifications nonetheless meets the specified criteria for being classified as such would be made in the first instance by the POTW, subject to subsequent review by the Approval Authority. One commenter asserted that EPA cannot legally delegate to a POTW the authority to determine whether a modification is "substantial." The

commenter misconstrues the Agency's action. EPA has provided a comprehensive list of POTW program modification which the Agency has identified as "substantial" modifications. In addition, the Agency has set general standards which any other program modification may be determined to be substantial, and thus subject to prior approval by the Approval Authority. These standards are merely to be applied by the POTW to situations not included on the list of substantial modifications. EPA acknowledges that this process could conceivably result in some modifications that are actually substantial not being subjected to prior Approval Authority approval. The likelihood of this has been reduced, however, by the expansion of the proposed list of identified "substantial" modifications in the final rule, so that substantial modifications which are not listed and which do not clearly meet the general standards of the rule are likely to be of less significance and thus properly the subject of subsequent review by the Approval Authority. Therefore, it is the Agency's position that this does not constitute a "delegation" of authority to POTWs. In the event that a POTW should designate as "non-substantial" a program modification that is in fact "substantial," the POTW would face a "penalty" in that the POTW will then have to resubmit the program modification for approval as a "substantial" program modification.

Commenters offered a number of approaches for dealing with modifications not requiring prior approval (i.e., "non-substantial" modifications), including evaluation during program audits, and notification in the POTW's annual report. Audits are not an appropriate mechanism for dealing with "non-substantial" program modifications. A particular program might not be audited more than once in every five years. Although "non-substantial" modifications are presumed to be relatively insignificant, the Approval Authority should nonetheless be informed of them in a timely fashion. These modifications should be reported to the Approval Authority at least 30 days in advance of when they are to be implemented by the POTW. The final rule has been modified to provide for this. Consequently, "non-substantial" program modifications will be thus deemed to have been "approved" by the Approval Authority, unless the Approval Authority determines that a modification reported as a "non-substantial" modification is in fact a

substantial modification, within 90 days of the submission of a statement to the Approval Authority.

One POTW suggested that instead of being required to obtain prior approval for "substantial" program modifications, POTWs should only be required to give notice of program modifications to the Approval Authority, who would then have only retroactive veto authority for all program modifications. However, for unauthorized program modifications, disapproval prior to implementation by the POTW is preferable to disapproval "after the fact." The Agency understands the concern expressed by several POTWs that prior review by the Approval Authority may delay changes and hinder effective program implementation. However, where an approved program is being substantially modified, prior review by the Approval Authority is necessary to ensure that the modified program will continue to comply with all applicable requirements. Moreover, as discussed below, the POTW's NPDES permit will also need to be modified to correctly reflect the program as modified. By requiring prior review and public notice of "substantial" program modifications, it becomes possible to allow even significant program modifications to be processed as minor permit modifications under 40 CFR 122.63, as amended today (see discussion below) thereby simplifying the entire process.

A State commenter suggested that where a program modification involves a change to the POTW's ordinance (which, according to the commenter, would be the case for all four of the substantial modifications specified in the proposal), additional public notice is unnecessary because public input is already solicited in the ordinance revision process. EPA agrees that where public participation in the process of amending the ordinance is equivalent to that required under § 403.11, additional public notice and comment for the program modification would be duplicative. However, because not all municipalities may have equivalent public participation procedures for amending their ordinances, the Agency has concluded that it would be inappropriate to allow a blanket exemption from the § 403.11 procedures for program modifications that involve amendment to a local ordinance.

Several commenters addressed the issue of incorporation of program modifications in the POTW's NPDES permit. Two commenters, a POTW and a State, asserted that a permit modification is not necessary every time a POTW's program is modified, since

the permit language incorporating the original program may be general enough to also encompass the modified program. Another POTW commented that only major program modifications with substantial operational impact should be incorporated in the POTW's permit. In response, EPA notes that the program initially incorporated into the POTW's permit is the program *as originally approved*. Changes in the operation of the program that differ from the original program submission are thus beyond the scope of what has been incorporated in the permit, and the permit must be modified accordingly in order for the POTW to be in compliance.

One commenter apparently misunderstood the proposal to require incorporation of program modifications in the POTW's permit only on permit reissuance. Under the proposal, substantial program modifications would be incorporated into the POTW's permit through a minor permit modification under 40 CFR 122.63 of the NPDES regulations (as amended on June 4, 1986, 51 FR 20426). Other program modifications would have been incorporated into the permit the next time the permit was reissued or modified for another reason. Thus, it appears the commenter was referring to the proposed permit modification procedure for non-substantial program modifications.

Under today's final rule, § 122.63 is being amended, as proposed, to add a new paragraph (g) which will allow "substantial" program modifications to be incorporated into the POTW's permit through the minor permit modification provision of 40 CFR 122.63. As discussed, this is a reasonable approach because, even though these are not minor changes in the POTW's program, they are subject to the full notice and comment procedures of § 403.11(b)-(f). Under the final rule, "non-substantial" program modifications, although not subject to prior review and public notice, are deemed to be "approved" by the Approval Authority and thus will also fall within the ambit of 40 CFR 122.63. In this way, the Agency has adopted, at least in part, the request of the environmental group that commented that, since the permit forms the basis for enforcement, the permit should be kept up to date for all modifications to the POTW's program. Since "non-substantial" program modifications do not raise the concerns presented by "substantial" program modifications, it is not necessary to require full notice and comment procedures and thus the Agency has determined that "non-substantial"

program modifications can be treated as minor permit modifications without such procedures. In the event that the Approval Authority should determine, upon subsequent review, to reject "non-substantial" program modifications as "substantial" program modifications, then such program modifications would, of course, then be subject to full notice and comment procedures.

Several POTWs recommended setting a time limit for Approval Authority review of program modifications. The recommended times ranged from 30 to 90 days. EPA agrees that a time limit for these reviews is desirable to avoid undue delay in acting on proposed program modifications. Approval Authorities have 90 days from the date of public notice to review original program submissions (see, § 403.11(a)). Since review of modifications to these programs after approval can generally be expected to be considerably less complicated than review for original program approval, 60 days is a reasonable period for reviewing such modifications, especially in view of the importance of avoiding delay in implementing necessary modifications. Therefore, the Agency is also modifying § 403.11(a) to impose a 60-day time limit on Approval Authority review of substantial program modifications.

Since non-substantial program modifications may be submitted only for review by the Approval Authority because they may be numerous and because they are presumed to result only in incidental changes to a POTW's program, the Approval Authority should have 90 days to review such modifications to determine whether they need to be resubmitted as substantial program modifications. The final rule has thus been modified to provide for this. In the event that such program modifications are then resubmitted for approval as substantial program modifications, the Agency will then have 60 days to review such modifications, as with other substantial program modifications.

Finally, in response to a request from one commenter, EPA emphasizes that only those portions of a POTW's program that are being substantially modified are subject to public notice. This is consistent with the procedures for modifying NPDES permits (see, 40 CFR 122.62, 40 CFR Part 124).

d. *Today's rule.* The final rule has been modified from the proposed rule in the following respects: (1) Prior approval is required only for "substantial" modifications; (2) the list of identified "substantial" modifications has been expanded to include changes to all local limits (not only those contained in a

local ordinance) resulting in less stringent local limits, changes to the POTW's legal authorities (in addition to changes in the POTW's enforcement authorities), a decrease in the frequency of industrial user inspections or sampling by the POTW, a decrease in the frequency of self-monitoring or reporting required of industrial users, changes to the POTW's confidentiality procedures, significant reductions in the POTW's program resources (including personnel commitments, equipment, and funding levels), and changes in the POTW's sludge disposal and management practices; (3) the determination of whether a particular modification not included on the list of "substantial" modifications nonetheless meets the specified criteria for being classified as such would be made in the first instance by the POTW, subject to later review by the Approval Authority; (4) non-substantial modifications are required to be reported to the Approval Authority at least 30 days prior to implementation subject to subsequent review by the Approval Authority within 90 days; and (5) the Approval Authority has 60 days to review substantial program modifications. The final rule also provides that the Approval Authority may designate as "substantial" other specific modifications in addition to those listed in the rule. The Agency is also finalizing the change to § 122.63, by adding new paragraph (g), as proposed.

C. POTW and State Pretreatment Program Approval

1. POTW Pretreatment Program and Removal Credit Application Submission—Approval Authority Action [40 CFR 403.9(e)]

a. *Existing rule.* A POTW seeking pretreatment program approval must submit to the Approval Authority certain information described in § 403.9(b), including a statement certifying that the POTW has adequate authority to carry out the program, copies of all relevant legal authorities, a description of the POTW's organization for administering the program, and a discussion of resources available for program implementation. POTWs applying for removal credit authority must submit an application containing the information required in § 403.7(e) including a list of pollutants for which removal credits are proposed, data on the POTW's consistent removal of these pollutants, proposed revised limits, a certification that the POTW has an approved pretreatment program, a description of the POTW's sludge use and disposal methods, and a

certification that granting removal credits will not cause a violation of the POTW's NPDES permit. The procedures for Approval Authority review of and action on these requests are the same. After receiving the applicable submission(s), the Approval Authority is required to make a preliminary determination of whether the submission contains all the items required under § 403.9(b) or, if appropriate, § 403.7(e). If the submission is determined to be complete, the Approval Authority must notify the POTW and initiate the public notice and review procedures set forth in § 403.11. Following public comment, the Approval Authority completes its review of the program submission and issues its final determination. The regulations require the Approval Authority to issue its final decision within 90 days, unless the comment period is extended beyond 30 days, in which case the Approval Authority shall have an additional 90 days to complete its review. However, the existing regulations do not specify how much time the Approval Authority has in which to make its initial completeness determination.

b. *Proposed change.* PIRT's final report stated that the lack of a deadline for the Approval Authority's completeness determination for POTW Pretreatment Program and removal credit submissions has led to unnecessary delays. To address this perceived problem, PIRT recommended that the Approval Authority shall have 60 days from the date of a POTW pretreatment program or removal credit application to determine whether this submission meets the applicable requirements of paragraphs (b) and (d) of § 403.9. The Agency agreed with this finding, and proposed to add such a 60-day time limit. The proposed time limit, in conjunction with current time periods for final Approval Authority action, should help ensure that local program and removal credit requests are acted on within a maximum of 240 days, assuming the request is complete.

c. *Response to comments.* Nine commenters submitted comments on this proposed change. Six of the nine fully supported this change to help ensure timely completion of Approval Authority action on pretreatment program or removal credits authority requests. These six commenters included POTWs, industries, an industry association, and an environmental group.

One Approval Authority was opposed to this change, citing its current workload, and stating that "it is unlikely that adequate review of pretreatment

program submittals can consistently be accomplished in 60 days * * *. As noted above, the Agency agreed with the PIRT finding and proposed the 60-day deadline for completeness determinations. The Agency does not believe that this will be a significant burden on Approval Authorities. This change will only require that an Approval Authority review a submission for completeness, not adequacy. The Agency does not expect that the Approval Authority will be able to state at the end of the 60 days whether the program submitted is approved, only that the submission is complete.

One POTW and one industry group submitted comments on this proposed regulatory change that questioned the legal status of removal credits. This issue is discussed below in the response to comments for Approval Procedures for POTW Pretreatment Programs and POTW Revisions of Categorical Standards. This change only pertains to the timing of completeness determinations on removal credits applications, not whether such applications are allowed.

d. *Today's rule.* EPA is promulgating this change as proposed.

C. 2. Approval of State Pretreatment Programs—State Regulations [40 CFR 403.10(g)(1)(iii)]

a. *Existing rule.* The CWA amendments of 1977 required that all State NPDES programs include pretreatment programs. For new State programs, a pretreatment program must be included as part of the NPDES submission. Approved NPDES States were required to request modification to include pretreatment by March 27, 1980 (§ 403.10(b)). The Water Quality Act (WQA) of 1967 amends this requirement to allow partial program approvals provided certain requirements are met. The requirements would allow approval of NPDES authority without pretreatment program submission. However, the WQA also requires that where a partial program is approved, the program be part of a phased effort resulting in complete assumption of all aspects of the program within five years.

In general, States seeking approval of pretreatment programs must have detailed regulations in place before program approval. However, under § 403.10(g)(1)(iii), EPA may authorize an NPDES State to operate a pretreatment program without implementing regulations in effect if the State has sufficiently detailed statutory authority and has submitted a detailed description of the procedures by which it proposes to implement the program. There is no comparable provision in the NPDES

regulations, which require all implementing regulations to be in effect prior to NPDES program approval. (See, 40 CFR 123.21(a).)

EPA adopted § 403.10(g)(1)(iii) in 1980 for several reasons. First, several States suggested that having pretreatment regulations in effect was not essential to ensure implementation of the pretreatment program in NPDES States that had already demonstrated their ability to carry out a complex NPDES permit program on a statewide level. Second, the delay resulting in some cases from the promulgation of regulations was seen as an impediment to substantial environmental benefits that would follow from early approval of State Pretreatment Programs. Third, some of the authorities necessary for successful implementation of the pretreatment program are part of the NPDES program as well and are encompassed by the State's existing NPDES regulations. For those matters unique to the pretreatment program, EPA believed that a comprehensive statement describing how the State intended to carry out this portion of the program and indicating the State's readiness to promulgate regulations in the future, in concert with detailed statutory authority, would provide sufficient public notice and assurance of the State's authority and intention to carry out the program.

The 1980 revision was intended to facilitate State program approval where the State had adequate authorities. Even where States were approved without regulations, it was expected that the State would promulgate pretreatment regulations at a later date. Moreover, EPA recognized that all States would need to revise their NPDES regulations to conform to the May 19, 1980 Final Consolidated Permits Regulations. The addition of § 403.10(g)(1)(iii) allowed States to coordinate those rule changes with promulgation of pretreatment regulations.

b. *Proposed change.* EPA proposed to delete § 403.10(g)(1)(iii), thus requiring all States to have adequate regulations at the time of program approval. As noted above, under existing regulations, the option of not developing regulations prior to program approval is available only if the State program description fully describes the procedures it intends to use and how it intends to implement each of the required legal authorities in the absence of regulations. This also necessitates a detailed discussion of how each of these required legal authorities can be directly applied and enforced. In addition, the Attorney General's Statement must fully explain the State's legal authority, with special

emphasis on the direct applicability and enforceability of the State statute without implementing regulations. Obviously, a State can only meet this burden if the statute is so detailed as to be "self-implementing."

EPA's experience has shown that it is highly unlikely that a State will have sufficiently detailed statutory authority to operate a pretreatment program without implementing regulations. In those States whose programs were approved without regulations in effect, problems have arisen, particularly with regard to enforcement of categorical pretreatment standards against industrial users. One State that has since developed regulations informed EPA that it found it could not enforce its pretreatment program, notwithstanding the commitments in its program description. In its Final Report to the Administrator, PIRT noted these problems and recommended that § 403.10(g)(1)(iii) be deleted. EPA agreed with the Task Force's recommendation and proposed to delete this provision. In deleting § 403.10(g)(1)(iii), the Agency intended that pretreatment regulations would be made consistent with the NPDES regulations and that, in the future, States requesting approval of their State pretreatment programs would have to have all necessary implementing regulations in place before their programs can be approved. In addition, those approved States lacking pretreatment regulations would have to promulgate regulations were the absence makes their program deficient under the revised § 403.10.

c. *Response to comments.* EPA received several comments regarding this proposed regulation. One Control Authority and two national environmental interest groups supported this change. The Control Authority merely stated that the change seemed reasonable, although it had no effect on that Authority. One environmental interest group cited its litigation against a State pretreatment program that did not have effective regulations as the obvious reason why this change was needed. Another environmental group supported the proposed revisions based on the recommendations at pages 66 and 67 of the PIRT report.

The one environmental group also stated that the Agency should allow no more than 30 days for States with approved pretreatment programs that do not have sufficient regulations to submit regulations to rectify the situation. This group believes the 30-day time period is justified for three reasons: (1) It is the deadline recommended by PIRT; (2) it is the deadline mandated by Congress in

the CWA; and (3) States have had almost seven years to adopt the necessary regulations and should not be rewarded for recalcitrance. One State Approval Authority also suggested that the Agency establish a time frame for deficient State pretreatment programs to promulgate regulations. The commenter suggested that the Agency keep in mind that regulation development at the State level is a lengthy process. EPA agrees with the commenters that a time frame for adopting State regulations is necessary, but does not agree with the commenter that 30 days is a sufficient time period for promulgating new State regulations. EPA's State NPDES program regulations already require State programs to establish regulations or amend statutes within certain time periods after federal regulations or statutes are amended. (See, 40 CFR 123.62(e).) Adoption of State pretreatment regulations should be consistent with the NPDES regulations. Thus, the Agency is today promulgating a requirement in § 403.10(g) that a State establish pretreatment regulations within one year from the effective date of today's rule, unless a statutory change is required in which case regulations must be in place within two years after the effective date of today's rule.

One State Approval Authority recommended that EPA not go forward with this proposed change. That Authority stated that the current requirements are adequate to determine if a State program can be approved, and that the requirement to have State regulations in place could unnecessarily delay implementation of the program. EPA does not agree with this commenter. As noted above in section (b), the Agency has received information and is convinced that State pretreatment programs cannot be run effectively without implementing regulations in place.

d. Today's rule. The Agency is amending § 403.10(g) as proposed, and adding the requirement that States promulgate necessary regulations within one year after the effective date of today's rule, unless a statutory change is necessary in which case regulation must be adopted within two years after the effective date of today's rule.

C.3. Approval Procedures for POTW Pretreatment Programs and POTW Revisions of Categorical Standards [40 CFR 403.11(b)]

a. Existing rule. Section 403.11 sets out the procedures for approving POTW pretreatment programs and applications for removal credit authority. Upon receipt of a local program submission or

removal credit application, the Approval Authority must first determine whether the submission is complete. The elements of a complete submission are set out in § 403.9(b) for POTW program approvals and §§ 403.7(e) and 403.9(d) for removal credits. After determining that a submission is complete, the Approval Authority must provide notice and an opportunity to request a public hearing. Section 403.11(b) requires issuance of the public notice within 5 days after the completeness determination.

b. Proposed change. PIRT recommended changing the 5-day time limit for issuing public notice following a completeness determination to 20 work days. PIRT concluded that 5 days was too short because Approval Authority procedures are often not sufficiently expeditious to meet that limit. EPA agreed with PIRT's recommendation and the 20-day limit recommended by PIRT.

c. Response to comments. Commenters included a POTW, an industry, a trade association, a State and an environmental group. Most supported the proposal. The State commenter, however, felt that the time period for issuing public notice following a completeness determination should be extended to 45 instead of 20 days. The commenter maintained that more time is needed to accommodate all necessary interactions with the public and internal communications.

EPA maintains that PIRT's original recommendation of 20 days is adequate for issuing public notice of POTW pretreatment program submission and applications for removal credit authority after a completeness determination. As stated in the preamble to the proposed rule, the 20-day time limit is more realistic than a 5-day limit while still conforming to the basic intent of providing prompt public notice of submissions that are under Agency review. The State commenter did not provide any details as to why 45 days was required. In the absence of such information, it is appropriate to follow PIRT's recommendation.

One commenter noted that the proposed language referring to § 403.7(c), which covers provisional removal credits, requires clarification. The proposed language requires public notice within 20 days after "the approval authority elects to review the removal allowance submission." The commenter requested clarification of when the approval authority election is triggered. The reference to § 403.7(c) in the proposal was an error. The intended section is § 403.7(d), which allows POTWs required to develop

pretreatment programs to conditionally grant removal credits subject to certain terms and conditions. Section 403.7(d)(6) allows the Approval Authority to delay review of conditional removal credit applications, with the conditionally revised limits remaining in effect until such review is conducted. The language in the proposed rule was intended to provide for such delayed review. However, because the vast majority of required POTW pretreatment programs have already been approved, and in light of the recent decision by the United States Court of Appeals for the Third Circuit striking down the existing removal credit provision (§ 403.7), *Natural Resources Defense Council, Inc. v. EPA*, 780 F.2d 289 (3d Cir. 1986), the Agency has decided to delete this reference from the final rule.

d. Today's rule. EPA is promulgating the rule as proposed, except that the language referencing § 403.7(c) has been deleted.

D. Reporting and Compliance Monitoring

1. Baseline Monitoring Report—Deadline for New Sources [40 CFR 403.12(b)]

a. Existing rule. To establish an effective local pretreatment program, it is essential that the POTW have complete information on the nature and quantity of pollutants contributed by each of its industrial users. Section 403.12(b) requires that all industrial users, including new sources, that are subject to categorical pretreatment standards submit baseline monitoring reports ("BMRs") to the Control Authority. These reports supply basic information to identify each contributing industrial user, the characteristics of the user's discharge and the user's compliance status. Information required to be reported in BMRs includes: a list of environmental control permits held by the industrial user, a description of the user's operations, information on flow and amounts of regulated pollutants discharged to the POTW, and a certification of whether the user is currently in compliance with the applicable categorical standard(s). If the industrial user is not in compliance when the BMR is prepared, the report must also include a compliance schedule showing the shortest time by which compliance will be achieved. The baseline monitoring report does not apply to discharges not covered by categorical standards. Elsewhere in today's rulemaking, EPA is clarifying that POTWs should require such reports where the POTW determines that

information on these discharges is necessary.

Section 403.12(b) requires industrial users to submit BMRs to the Control Authority within 180 days after the effective date of the applicable categorical standard, or within 180 days after a final decision on a category determination request, whichever is later. However, there is no deadline specified for new sources. Nor does § 403.12(b) contain a deadline for submission of BMRs by directly discharging existing sources that become indirect dischargers subsequent to the promulgation of an applicable categorical pretreatment standard.

b. *Proposed change.* EPA proposed to revise § 403.12(b) to require new sources, and existing sources that become industrial users subsequent to the promulgation of an applicable categorical standard, to submit a baseline monitoring report at least 90 days prior to commencement of the facility's discharge to a POTW. EPA also proposed to clarify that for new sources, the industrial user may provide estimates for the information on production, flow and the presence and quantity of regulated pollutants in its wastestream requested in § 403.12(b) (3)-(5).

EPA recognized that BMRs submitted by new sources under the proposed deadline cannot be complete; for instance, new sources cannot certify whether they will be in compliance with applicable categorical standards because they have not yet commenced discharge. For this reason, the regulations did not require new sources to include a compliance certification or compliance schedule in their BMRs. Similarly, new sources cannot monitor the flow or pollutant constituents and concentrations of their wastestreams, nor can they provide actual production data. However, an industrial user that is a new source can, and under the proposal would be required to, provide estimated data on these items. This information would allow the Control Authority to assess the potential impact of the new source on the POTW, the receiving waters into which the POTW discharges and current and alternative sludge use or disposal options. The Control Authority could also use this information to make a preliminary determination of whether additional limits beyond those in the applicable categorical pretreatment standard (i.e., local limits) will be necessary to prevent pass-through and interference at the POTW. In some cases, the POTW may need to set more stringent local limits on other contributors to the system to avoid

permit violations. Early submission of this information provides the POTW adequate time to determine whether such steps are needed. Without such estimates, the POTW would only learn too late that local limits were needed to avoid a permit violation.

c. *Response to comments.* EPA received comments from numerous POTWs, several industries, two States, an environmental group and a Federal agency. Most of the commenters supported the proposal. However, several commenters expressed opposition to various aspects of the proposal.

Two commenters found the 90-day time period to be inadequate. One of these commenters gave no support for its position, but the other, an environmental group, argued that there would be substantial political pressure on the POTW to allow start-up of a new facility 90 days prior to the planned commencement of operations, even if a violation of the POTW's permit would result. The commenter suggested that instead of 90 days, EPA require 6 to 12 months' notice to the POTW by new dischargers to the system. EPA realizes that in some cases political pressure might be present, particularly where new construction is involved. However, the Agency feels this factor is adequately addressed by making 90 days the minimum amount of time required between submittal of a BMR and commencement of discharge. Based on the other comments received on this issue, it is the Agency's belief that in most cases 90 days will allow sufficient time for the POTW to ensure that the proposed discharge is acceptable and will not cause permit violations or other problems at the POTW. Of course, where 90 days is not adequate, the POTW should require earlier submittal of the BMR. In all cases, EPA encourages the earliest possible contact between the POTW and new dischargers to its system prior to the commencement of discharge. This is especially important in cases of new construction, where various pressures are more likely because of the relatively large investment involved.

Three POTWs commented that 90 days is not always necessary, and that a shorter time period may be appropriate in some cases. One POTW expressed concern that the industrial user would be unnecessarily burdened where a shorter time is sufficient. Another POTW contended it would be illogical to require submittal of the BMR earlier than a permit application (e.g., where the POTW requires that permit applications be submitted less than 90

days prior to discharge). Two of the commenters felt the time period should be left to the POTW's discretion. One commenter recommended that the BMR deadline should be either: (1) At least 90 days prior to discharge, or (2) at the time an application for a sewer connection permit, building permit, or plumbing permit is made.

Although in some cases a shorter period may be adequate, based on all the comments received, 90 days is a reasonable minimum. To avoid having different deadlines for BMRs and permit applications, POTWs with permit application deadlines of less than 90 days may want to lengthen these deadlines to match the BMR deadline. (Making these deadlines coincide in all cases may not be possible, however, because the appropriate BMR submittal deadline may vary from case to case, depending, for instance, on whether new construction is involved.)

Two commenters suggested that BMRs for new sources should include information on the proposed pretreatment, if any, a new source plans to install. EPA agrees with this suggestion and is modifying the final rule to include this requirement. This will assist the POTW to more thoroughly assess the potential impact on the POTW and the facility's ability to achieve compliance with applicable standards.

A State commented that it seems unnecessary to require new sources to estimate the concentration of pollutants for purposes of the BMR, which would probably be very difficult and provide only a rough estimate, since actual data is required in the compliance report submitted 90 days after commencement of discharge. This comment overlooks the fact that the POTW needs some preliminary information on the nature of the industrial user's discharge, whether actual or estimated, in order to be able to make an initial determination of appropriate discharge limits prior to the industrial user's commencing discharge. With new sources, this will necessarily be estimated information. When actual data is received in the 90-day compliance report, it will be used to adjust the industrial user's limits as necessary.

Finally, an industrial commenter noted that § 403.12(b) does not require resubmittal of information in a BMR if the information has previously been submitted to the State Director or the Regional Administrator in compliance with 40 CFR 128.140(b) (1977), an earlier reporting requirement predating the Part 403 pretreatment regulations. The commenter stated that existing

industrial users that become part of an industrial category (e.g., through promulgation of an applicable categorical standard) may already have reported some of the required BMR information to the POTW, and should not be required to resubmit such data in a BMR.

The old regulatory provision cited by the commenter contained certain reporting requirements for industrial users. These required reports were to be submitted to either the State Director or the Regional Administrator. When the current Part 403 pretreatment regulations were initially promulgated, a provision was included so that industrial users that had submitted information under the old Part 128 provision would not be required to resubmit this data as part of their BMR under § 403.12(b) of the new regulations. However, there was no provision in the old regulations regarding submittal of reports to the POTW. The commenter, however, wants to extend the allowance for previously submitted information in § 403.12(b) to include any data previously submitted to the POTW. EPA declines to follow this suggestion. The old regulatory provision contained specific reporting requirements for industrial users. To compile current BMR data on an industrial user who had submitted reports under this provision, the POTW need only compile at most a relatively small number of documents. However, under the commenter's suggested approach, the POTW may need to retrieve numerous documents submitted over time by the industrial user, each of which may contain only a small fragment of the required BMR data. The considerable burden this may represent for the POTW outweighs any inconvenience to the industrial user of resubmitting some previously submitted data.

d. Today's rule. EPA is promulgating the rule as proposed, except that BMRs for new sources will now be required to include information on the pretreatment equipment the new source proposes to install to meet inapplicable discharge limits. Again, it should be emphasized that the 90-day BMR deadline for new sources (and sources that become industrial users after promulgation of an applicable categorical pretreatment standard) is a minimum. The POTW may (and should) require earlier submission where appropriate. The Agency also wishes to reemphasize the importance of early contact between the POTW and new dischargers to its system, particularly in cases involving new construction.

D.2. Measurement of Pollutants [40 CFR 403.12(b)(5)(iv)]

a. Existing rule. Section 403.12(b)(5)(iv) establishes the frequency with which an industrial user must sample and analyze its wastewater to compile data for its baseline monitoring report (BMR). Under the present scheme, an industrial user must take multiple samples of each regulated wastewater, with the frequencies determined by the flow of those streams being sampled. Where the flow of the stream being sampled is less than or equal to 250,000 gallons per day, the industrial user must take three samples within a one-week period. Where the flow of the stream being sampled is greater than 250,000 gallons per day, the industrial user must take six samples within a two-week period. Each of these samples must be analyzed separately and the data submitted on the baseline monitoring report. The purpose of this sampling is to provide information to determine whether the industrial user is in compliance with the applicable categorical pretreatment standard(s).

b. Proposed change. EPA proposed to reduce the baseline sampling requirements for industrial users and set a uniform, minimum sampling requirement applicable to all industrial users. The proposal required that at a minimum, for purposes of compiling data for the baseline report, only one sampling analysis of pollutants would be needed. The proposal would not alter the required sampling techniques (e.g., 24-hour composite sampling), as provided in § 403.12(b)(5)(iii).

A pretreatment baseline report is comparable to the industry NPDES permit application form direct dischargers (e.g., form 2C). Both are means of collecting preliminary information about the particular facility and its discharge, and are used as a basis for determining whether additional steps need to be taken to achieve compliance with applicable discharge limits. Only one sampling and analysis of the specific pollutants is required for the NPDES permit application [40 CFR 122.21(g)(7)]. The proposed change to the BMR sampling requirement would, therefore, bring it in line with that required by its counterpart in the NPDES program.

As noted in the preamble, the proposed amendment could significantly reduce the paperwork burden associated with baseline monitoring reports without impairing EPA's ability to identify and control pollutants. A single sampling analysis is generally adequate to provide Control Authorities with a preliminary picture of an industrial

user's processes and wastewater characteristics. However, in more variable industries, more sampling may be necessary to ensure that the Control Authority obtains representative data. The single sampling proposed was intended to be a minimum. If the Control Authority determines that additional data and sampling are needed to evaluate the impact of the user's discharge or to set local limits, it can, and should, require such analysis. To determine compliance with categorical standards, the Control Authority will use an industrial user's self-monitoring program conducted by the Control Authority. The reduced sampling for the baseline report will not affect other sampling and analysis requirements.

c. Response to comments. Twenty-six responses were received on the proposal to reduce the minimum number of samples needed for a BMR.

One commenter suggested that the former regulatory minimum of three samples be retained unless the industrial user can demonstrate that fewer samples are sufficient. This suggestion would not be feasible. An industrial user would be adequate prior to starting any sampling effort. However, the industrial user might not be able to determine the adequacy of only one or two samples until after the sampling is complete. The current regulation requires that the BMR is to be written from data that is collected over a one or two week period. This time period might prove to be too short to allow adequate analysis of the data received from one or two samples. Therefore, in order to ensure the adequacy of the information, industrial users would perform three (or six) samples anyway. It is better for an industrial user to be required to perform only one sample unless the Control Authority determines more are needed after reviewing the BMR.

Several other commenters stated that one sample was not sufficient to provide an accurate description of an IU's discharge. The commenters noted that an industrial user's wastewater can be highly variable, and requested that the Agency not change the regulatory requirement of performing three (or six) samples. The Agency is not convinced that a one sample minimum is not adequate. The BMR is meant to serve as a "snapshot" of an industrial user's discharge for purposes of ascertaining the compliance potential of the facility with the categorical pretreatment standards applicable to that facility. BMRs may also be used by an industrial user to request a compliance schedule to meet the mandatory pretreatment

standards. The Control Authority has many other sources of information about the industrial user's discharge including EPA-issued guidance and development documents for the categorical industries, and information from BMRs submitted for similar facilities discharging to the Control Authority's POTW(s). The information in these documents can be compared to the information in the BMR from an industrial user so that the Control Authority can determine whether the BMR data accurately reflects discharges from the facility or whether further sampling is required. Where the data submitted with a BMR indicates the discharge is similar to that expected from that type of industry (as delineated in the development document, guidance document, or another BMR), then no further sampling should be needed. However, where the data contained in a BMR is vastly different from that contained in the references, then further sampling would be indicated.

Furthermore, this system would be more likely to obtain better information on the nature of an industrial user's discharge. As these commenters noted, an industrial user's discharge can be highly variable. Three samples in a one week period (or six samples in two weeks) may not detect this variability. However, a POTW could specify a sampling protocol that would more effectively detect the variability in this discharge.

Two commenters stated that because most BMRs have already been submitted, this change will either reward recalcitrant industrial users, or is moot. Although it would appear that this change rewards recalcitrant industrial users, those that have missed deadlines for submission of BMRs are subject to enforcement actions for failure to comply with the pretreatment requirements.

Several commenters made some suggestions as to points needing further clarification. One Control Authority stated that it does the BMR sampling and that it will do more sampling as appropriate. Another commenter suggested that the industrial user should be given the option of doing more sampling without being asked by the Control Authority. Nothing in the proposed regulation would prevent a POTW from sampling an industrial user in lieu of the industry sampling its wastestream. Nor would it limit the amount of samples an industrial user may perform. The requirement of § 403.12(b)(5) is a minimum requirement. However, where an industrial user decides to sample more than once for

the BMR, this fact and the total number of samples taken should be noted on the BMR so that the Control Authority can better analyze the data.

Two commenters requested that EPA clarify that further sampling could be required by the Control Authority; another commenter suggested that the regulatory language be changed so that further sampling would be required if one sample was found to be inadequate. The language in the proposal clearly establishes that the single sample is a minimum requirement. The preamble to the June 1986 proposal, today's preamble and these responses to comments should be read together to indicate that further sampling is not prohibited if one sample proves to be inadequate. Nothing in any of this language indicates a prohibition on a Control Authority requiring further sampling. In fact, the Agency encourages Control Authorities to require more sampling if they find that the one sample is inadequate. However, the Agency does not agree that further testing by an industrial user should be made mandatory because this could constrain several options that a Control Authority might want to pursue after determining that a single sample is inadequate. For instance, after making the inadequacy determination, a Control Authority might want to perform further sampling itself, or have an outside contract laboratory do the work. Therefore, the Agency has chosen not to include the suggested language.

d. *Today's rule.* EPA is promulgating this rule as proposed.

D.3. Sampling Techniques [40 CFR 403.12(b)(5)(iii)]

a. *Existing rule.* Section 403.12(b)(5)(iii) provides that, where feasible, the samples required in preparing an industrial user's baseline monitoring report must be obtained using "the flow-proportional composite sampling techniques specified in the applicable categorical Pretreatment Standard." Where composite sampling is not feasible, industrial users may take a single grab sample instead of each required composite sample.

b. *Proposed change.* In its Final Report to the Administrator, PIRT pointed out that the categorical pretreatment standards do not specify required sampling techniques. Accordingly, EPA proposed to revise § 403.12(b)(5)(iii) to correct this error. The proposal required that, except for five named pollutants, the industrial user must obtain 24-hour composite samples through flow-proportioned techniques where feasible.

For five pollutants—pH, cyanide, total phenols, oil and grease, and sulfide—the proposal required the use of grab

samples. These pollutants are subject to rapid degradation and therefore cannot be accurately sampled through 24-hour composite methods. The proposal made the sampling requirements of the General Pretreatment Regulations consistent with the NPDES regulations. The NPDES rules require the use of 24-hour composite samples in permit applications, except for seven pollutants for which grab sampling must be used (pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform). (40 CFR 122.21(g)(7).) Unlike the NPDES rules, temperature, residual chlorine and fecal coliform were not included on the list of pollutants for which grab samples are required because they are not regulated under categorical pretreatment standards and thus need not be reported on the BMR. EPA did propose to add sulfide, which is not included in the NPDES provision, since it is regulated under categorical standards and tends to rapidly oxidize and/or volatilize.

PIRT also recommended that time-proportional sampling be allowed where flow-proportional automatic sampling is not feasible. In support of its recommendation, the Task Force stated that time-proportioned samples, while not as accurate as flow-proportioned samples, are more representative of an industrial user's daily discharge than the single grab sample currently allowed in the regulation.

In response to PIRT's recommendation, EPA proposed to change the type of sampling that will be allowed by industrial users where flow-proportioned composite sampling is not feasible to allow time-proportioned or grab sampling. Under today's proposal, the industrial user must demonstrate to the Control Authority that the use of an automatic sampler is infeasible and that time-proportional sampling or grab sampling will provide a representative sample of the effluent being discharged. The proposal also would require the Control Authority to make the determination of whether flow-proportional sampling is feasible. Where the Control Authority determines that flow-proportional sampling is infeasible, it would waive the requirements and allow grab or time-proportional sampling. Consistent with recent revisions to the NPDES regulations (49 FR 38046, September 26, 1984) EPA also proposed to amend § 403.12(b)(5)(iii) to provide that where grab sampling is used, a minimum of four grab samples must be taken.

c. *Response to comments.* EPA received comments from 24 entities on these proposed regulation revisions.

Eight of the commenters stated that they were in favor of the proposal and three commenters stated that they were not in favor of the proposal. The remaining thirteen commenters seemed to favor the intent of the proposal, but suggested major changes be made to the proposed regulation. It appears that several of the commenters in this last group were confused about the application of this provision. These commenters thought that the provision applied to samples taken for compliance monitoring by an industrial user. However, this provision applies to sampling performed by an industrial user in developing the baseline monitoring report for the facility.

The Agency has decided to promulgate the regulation as proposed with only minor revisions as suggested by some of these commenters. The intent of the proposed regulation revision was to remove the requirement in the existing regulation that an industrial user must use "the flow-proportional composite sampling techniques specified in the applicable categorical Pretreatment Standard." This change was being made in response to a PIRT notation that Pretreatment Standards do not specify any required sampling techniques. Although the proposal dropped the reference to the pretreatment standards, it incorporated the requirement that an industrial user use flow-proportional techniques except when sampling for five specific pollutants: pH, cyanide, total phenols, oil and grease, and sulfide, where grab samples would be allowed. Almost all of the commenters on this provision noted that certain pollutants should or should not be sampled by a particular technique (e.g., total toxic organics should be sampled by a grab sample, pH can be sampled by other than a grab sample, and volatile organics should be a grab sample). The Agency agrees that volatile organics are more properly sampled by grab sampling. Therefore, today's final rule adds volatile organics to the list of pollutants to be sampled by a grab sample. The Agency has taken this step to alleviate the confusion over whether volatile organics are more appropriately sampled as a grab sample or composite sample. If a POTW or Industrial User needs further information on what type of sample should be obtained, the methods described on pages 3-21 and 3-22 in the "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986) discuss when time-proportional or grab samples may be used for sampling wastewater pollutants at an industrial user's facility.

One clarification that the Agency would make regarding the proposal is in defining the term "infeasible." The PIRT recommendation centered on the infeasibility of flow-proportional sampling. The problem identified was not with the ability to get a sample, but rather in the inability to measure flow through the industrial user's sewer connection. The Agency's experience, as verified by the PIRT recommendation, is that the infeasible aspect of flow-proportional sampling is the measurement of the flow. In many instances, time-proportioned sampling will use the same automatic sampler as used in flow-proportional sampling. However, because a flowmeter is not required, time-proportional sampling can be performed.

Today's final rule allows the use of time-proportional automatic or individual grab sampling where it is infeasible to monitor flow or perform flow-proportional sampling. The only requirement is that the sampling be representative of the facility's discharge. The only time grab sampling is required is for the six pollutants listed.

d. *Today's rule.* EPA has altered the proposed provision to reflect the commenters' concerns regarding specific pollutants. The final rule clarifies that four (4) grab samples are required for the listed pollutants, and the list has been expanded to include volatile organics. Time-proportional or grab sampling is allowed if flow-proportioned sampling is not feasible, including where flow metering is not feasible. Otherwise, flow-proportional monitoring is required.

D.4. Annual POTW Reports [40 CFR 403.12(i)]

a. *Existing rule.* As a means to oversee the implementation of POTW pretreatment programs, EPA and many approved States usually include in the POTW's NPDES permit a condition requiring that the POTW periodically submit a report describing its program implementation activities during the period covered by the report. These permit conditions, which are inserted at the time the conditions of the approved program are added, generally require the submission of an annual report. These reports are typically required to include an update of the POTW's industrial user population, information on the compliance status of the industrial users, information on the POTW's compliance monitoring and enforcement activities, and information on modifications to the POTW's approved pretreatment program. The majority of POTWs with approved programs have conditions requiring such reports in their

NPDES permits. Although these permit conditions are authorized by law (see, sections 402(b)(8) and 308 of the CWA) the General Pretreatment Regulations do not contain a specific provision describing the contents of the reports POTWs should submit on the status of their pretreatment program implementation.

b. *Proposed change.* PIRT recommended that EPA set forth in the General Pretreatment Regulations the requirement of an annual POTW report for all POTWs with pretreatment programs. This report would be submitted to the Approval Authority and would describe program implementation activities conducted by the POTW during the preceding year. The Task Force stated that such a report is essential to the adequate oversight by the Approval Authority, whether EPA or approved States, of POTW pretreatment programs. By describing the annual report in the regulations, a greater degree of uniformity will be ensured among the reports submitted to Approval Authorities.

In response to PIRT's recommendation, EPA proposed to add a new paragraph (i) to § 403.12 requiring each POTW with an approved pretreatment program to submit a report to the Approval Authority at least annually describing program implementation activities. (The submission date will be set in the POTW's NPDES permit.) Under the proposed rule, the report would contain, among other things, an updated list of the POTW's industrial users (or a list of additions and deletions keyed to a previous list) showing the categorical pretreatment standards and/or local limits applicable to each, a summary of the compliance status of each industrial user over the period covered by the report, a summary of compliance monitoring and enforcement activities (including inspections) conducted by the POTW during the reporting period, and any other information requested by the Approval Authority, as appropriate for adequate oversight of the POTW's pretreatment program. This information would provide the Approval Authority with the means to effectively perform its oversight responsibilities with respect to the POTW pretreatment programs within its jurisdiction. By adding the provision to the regulations, all such reports would be required to contain at least the same minimum information, thus providing some consistency. Of course, the Approval Authority could impose such other requirements as may be necessary or appropriate.

The proposed rule also referenced additional information on these reports made available in EPA's "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986). By expressly providing for adequate oversight in this way, the obligations of EPA, the State, and POTWs with respect to the implementation of the national pretreatment program could be met more effectively.

c. Response to comments. The majority of commenters on this issue were POTWs. Comments were also received from several States, two environmental groups and one industry. All of the commenters supported the annual report concept. Many of them supported the provision as proposed. Several others offered comments on various aspects of the proposal, including the scope of the report, the relationship of annual reports to audits, terms requiring definition or clarification, the degree of Approval Authority discretion allowed, resource implications, and the usefulness of a standardized form for annual reports.

Three commenters suggested that the coverage of the report be limited to a certain group of industrial users. One of the commenters recommended limiting the report to "significant" industrial users, and leaving the definition of "significant" to the Control Authority. Another commenter preferred that the report be limited to categorical industrial users. The third commenter recommended limiting the required compliance monitoring and enforcement information to "significant violators," but did not define this term. The new regulatory requirement provides sufficient flexibility for making appropriate judgments concerning which industrial users should be included in the summary of compliance status and enforcement activities sections of POTWs' annual reports (§ 403.12(i) (2) and (3)). The "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986) provides a recommended definition of "significant industrial user" to assist in making these judgments.

This does not, however, affect the requirement of § 403.12(i)(1) that the annual report must contain an updated list of all industrial users or (optional for a POTW that has previously submitted a list of its industrial users to its approval authority) a list of additions and deletions keyed to a previously submitted list. Section 403.12(i)(1) also requires the POTW to provide a brief explanation of each deletion. This does not require a detailed explanation. A brief, one-line answer in the section of the Annual Report on delisting will

suffice. This rule does not require approval or disapproval of such deletions by the Approval Authority.

Another commenter recommended that POTW pretreatment program audits conducted by the Approval Authority should be used instead of annual reports to evaluate program implementation because the reports do not always represent a true picture of the POTW program's effectiveness or inefficiencies. This commenter apparently misunderstands the relationship between audits and annual reports. These two activities play related but distinct roles in the national pretreatment program. The annual report supplies basic information on industrial user compliance and POTW compliance monitoring and enforcement activities during the year. The audit is a more detailed evaluation of the POTW's program, including the adequacy of the underlying legal authorities and procedures. The purpose of the annual report is to provide a relatively brief self-assessment of the POTW's performance in implementing its program. The audit is a much closer look by the Approval Authority at the POTW's program implementation, and also is geared more toward identifying deficiencies in the POTW's program that need to be corrected. Moreover, the annual report is required to be submitted at least annually, while the minimum audit frequency is once every five years. Because of these differences, EPA does not agree with the commenter that audits should be used in lieu of annual reports and declines to follow this recommendation in the final rule promulgated today.

Two commenters requested more specificity with respect to the information required to be included in annual reports, and in particular the type of information required on industrial user compliance and POTW compliance monitoring and enforcement activities. The final rule differs in this respect from the rule as proposed. Today's regulation does not require a detailed case-by-case report of IU compliance or of POTW compliance monitoring and enforcement activities. Rather, a composite summary of IU compliance and of POTW compliance monitoring and enforcement activity will suffice. Such a summary can be reported on a form simply by filling in appropriate boxes.

EPA's "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986), mentioned above, explains in considerable detail the kind of information that should be included in annual reports, including information on

industrial user compliance and POTW monitoring and enforcement activities. Approval Authorities and POTWs should consult this document for guidance on complementing the regulatory annual report requirement. The guidance includes a model pretreatment performance summary report form as a suggested format for reporting the information required by § 403.12(i) (2) and (3).

Another two commenters objected to the provision in proposed § 403.12(i)(4) allowing Approval Authorities to require additional information in annual reports as being too broad and potentially creating unreasonable paperwork burdens. EPA does not agree that the provision would result in unreasonable burdens. Any additional information required by the Approval Authority must, under the proposed provision, be "relevant" and, as explained in the preamble to the proposal, "appropriate for adequate oversight of the POTW's pretreatment program." (See, 51 FR 21469.) Moreover, as is also noted in the preamble to the proposal, the Approval Authority may always impose such other reporting requirements on its POTWs as it deems necessary or appropriate.

One State contended that the proposed amendment would force it to change its existing requirements for POTW reporting because of a State statute that does not allow State requirements to be more stringent than federal requirements. However, the proposed annual report provision states that the reports are to be submitted "at least annually" and the listed contents are characterized as the "minimum" required. Therefore, States with laws similar to the commenter's will not be adversely affected by the rule as proposed in this respect, since it allows for more stringent requirements to be imposed.

The industrial commenter asserted that annual reports should be limited to information necessary to evaluate progress of program implementation since the previous report and should concentrate on POTW actions rather than those of industrial users. EPA disagrees. The ultimate goal of the pretreatment program is to prevent adverse impacts on POTWs and receiving waters from industrial discharges to sewer systems. Existing standards and requirements have been developed to achieve this goal. The extent of compliance with these standards and requirements is thus an important measure of the success of the pretreatment program. Moreover, a POTW's compliance monitoring and

enforcement activities cannot be evaluated in a vacuum, but must be related to the nature and compliance status of the POTW's industrial user population.

Two commenters were concerned about the increased resource demand that would result from the proposal. As stated in the preamble to the proposed rule, however, most Approval Authorities already require annual (or more frequent) reports from their POTWs. Therefore, the new provision should not significantly increase the overall resource demand for POTWs. Environmental groups noted that PIRT recommended that EPA develop a standardized form for annual reports in order to enhance uniformity. The above mentioned "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986) contains a suggested format that includes most of the information required in the new regulatory provision. EPA may develop a required form in the future but will rely on this suggested format in the near term.

d. *Today's rule.* EPA is promulgating the final rule as proposed, with one minor change. Instead of requiring that annual reports contain information on the compliance status of each industrial user, the final rule requires inclusion in the reports of "a summary of the status of Industrial User compliance." This will provide sufficient flexibility for tailoring the annual report requirement to specific industrial user populations.

D.5. Signatory Requirements for Industrial User Reports [40 CFR 403.12(i)]

a. *Existing rule.* The signatory requirements for industrial user reports in the general pretreatment regulations were patterned after a similar provision in the NPDES regulations. Section 403.12(i)(1) currently states that reports submitted on behalf of a corporation must be signed by a "principal executive officer of at least the level of vice president" or an authorized representative of that person who is responsible for the overall operation of the facility from which the discharge originates. The signatory requirement is intended to ensure that the corporation is legally accountable for the information submitted. The signature on reports or authorization by a principal executive officer provides this accountability.

b. *Proposed change.* In the past four years, EPA has revised the NPDES signatory requirements governing permit application (48 FR 39611, September 1, 1983) and reports from permittees (49 FR 37998, September 26, 1984). These changes were made to reduce the

burden of investigating and signing applications and reports for officers of large corporations while continuing to maintain a sufficiently high level of corporate responsibility. This rationale applies equally to industrial user reports in the pretreatment program. Therefore, EPA proposed to amend the pretreatment signatory provision (§ 403.12(i)) to make it consistent with its NPDES counterpart. (EPA also proposed to redesignate this paragraph as § 403.12(l) to account for the insertion of new paragraphs (h) and (j) in § 403.12, also proposed).

The proposal changed the existing regulations to allow reports to be signed by "a responsible corporate officer," or an authorized representative of that individual. "Responsible corporate officer" includes the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function. It also incorporated into the regulation EPA's interpretation of "executive officer of the level of vice president" adopted in a previously published policy statement regarding the NPDES permit process (45 FR 52149, August 6, 1980). That statement clarified that an officer performing "policymaking functions" similar to those performed by a corporate vice-president could sign NPDES permit applications submitted by direct dischargers. In addition, the manager of one or more manufacturing, production, or operating facilities of a corporation can now qualify as a "responsible corporate officer" if the facility (or facilities) employs more than 250 persons or has gross national sales or expenditures exceeding \$25 million, as long as the manager has been authorized to sign reports in accordance with proper corporate procedures. Formal assignments or delegations of authority are not necessary for corporate officers identified in the proposed provision; it is presumed that these responsible corporate officers have the requisite authority unless the Control Authority has been notified otherwise.

Consistent with the NPDES regulations, the proposal also allowed a "duly authorized representative" of a "responsible corporate officer", to sign reports required under the pretreatment program. This reduced the burden on the regulated community while at the same time providing an equal degree of legal accountability on the part of the "responsible corporate officer." By authorizing a representative to sign reports, the responsible official does not lose legal accountability for the accuracy of the information that is submitted. A "duly authorized

representative" might be an individual or position responsible for the overall operation of an industrial user's facility (e.g., a plant manager). It might also be the individual in charge of all environmental matters for the industrial user. The person will, in many cases, have the best knowledge of the company's facility. Because he or she must have overall environmental responsibility within the company, and since their authorization to sign the report must come from a responsible corporate officer, the proposal would also ensure corporate responsibility.

This provision also was proposed to be revised by including the requirement that all reports submitted pursuant to that subsection shall include the oath set forth in § 403.6(a)(2)(ii). This is consistent with the NPDES regulations, which require a similar certification from signatories to NPDES permit applications and reports (see, 40 CFR 122.22(d)).

c. *Response to comments.* All twelve commenters on this issue supported the basic concept of making the pretreatment signatory requirements consistent with the NPDES requirements. Several commenters, however, provided additional comments and suggestions.

Several commenters noted differences between the proposed provision and the corresponding NPDES provision, and requested either clarification or that the pretreatment provision be made consistent with the NPDES provision. For example, one commenter requested clarification of the phrase "having overall responsibility for environmental matters for the Industrial User" as used in proposed § 403.12(l)(3)(ii). The commenter noted that a strict interpretation of this language might suggest that the plant environmental engineer could have signatory power, even though he would not have responsibility for the overall operation of the facility. EPA does not intend such an interpretation. The Agency's intent in revising the pretreatment signatory requirements is to make them consistent with the NPDES signatory requirements, which allow reports to be signed by the "individual or position having overall responsibility for environmental matters for the company" (emphasis added). (See, 40 CFR 122.22(b)(2) (1986).) The Agency agrees with the commenter that the proposed language needs clarification, and is therefore changing the final rule to refer to "company" instead of "Industrial User," consistent with the parallel NPDES language.

Two commenters objected to the fact that the proposed provision differed

from the NPDES provision in not including "superintendent" among those positions to whom signatory authority may be delegated. One of these commenters asserted that this deletion imposes an additional burden where a superintendent has been entrusted by the plant manager with responsibility for overall environmental operation at the plant. It appears that this commenter misunderstands the meaning of the term "superintendent" as used in the NPDES regulations. The term is intended to refer to a position having responsibility equivalent to that of a "plant manager" (i.e., having responsibility for the overall operation of the plant). It is not intended to include positions having responsibility for environmental matters at the plant. Although the commenter thus appears to have misunderstood the existing NPDES provision, it is true that the term "superintendent" appears in the NPDES provision but not in the proposed pretreatment provision. EPA agrees that the two provisions should be consistent, and is thus modifying the final rule to add this term.

One commenter noted that the list of potential "duly authorized representatives" in the proposed provision also did not include "operator of a well or well field," and that this should be included to be consistent with the NPDES provision. EPA agrees and has modified the final rule to include this term.

Two commenters had reservations about the certification language in § 403.6(a)(2)(ii), which, under the proposed provision, must be included in each industrial user report. This certification language, which originally appeared in the amended pretreatment regulations published on January 28, 1981 (51 FR 9404), was reinserted into the regulations in a final rule published on June 4, 1986 (51 FR 20426). (See, preamble at 51 FR 20427 for a more detailed discussion of the history of the pretreatment certification language.) As pointed out by the commenters, however, this certification language differs from that in the current NPDES regulations. To make the certifications in the pretreatment and NPDES regulations consistent, EPA is modifying the pretreatment provision to mirror the NPDES language.

Another commenter requested clarification of the proposal as it applies to complex, multi-plant industrial sites. The commenter recommended adding a provision to the proposal that would permit multiple signatories on industrial user reports from multi-plant sites with shared wastewater treatment facilities. This commenter stated that each

individual (i.e., plant manager who has responsibility for the overall operation of a single plant within a multi-plant site) should be allowed to sign the industrial user reports. EPA recognizes that complex industrial sites certainly exist (e.g., automobile manufacturing sites), but disagrees with commenter. An individual who has responsibility for shared treatment facility should be the "authorized representative" signing the industrial user report. Because individual plant managers within a multi-plant site may not have this responsibility, the Agency disagrees with the proposal of having multiple signatories on the reports. One person (not several) should sign the required reports on behalf of the corporation and be ultimately responsible for ensuring the accuracy and truthfulness of the reports. Although the individual most knowledgeable about the treatment plant operations is likely to be the treatment plant operator, this individual does not qualify as a "duly authorized representative" of the company and therefore cannot have the authority to sign the reports.

Two commenters recommended adding a provision dealing with changes in authorizations consistent with 40 CFR 122.22(c) in the NPDES regulations. One of the commenters also suggested expanding this provision (for both the NPDES and pretreatment regulations) to cover changes to authorization concerning the individual or position having overall responsibility for environmental matters within the company. The commenter argued that the same rationale applies as for the individual or position responsible for operating the facility, who is already covered by the rule. EPA agrees with both commenters, and is modifying the final rule accordingly. The Agency will make the necessary changes to the NPDES signatory provision in a future rulemaking.

The State commenter contended that documenting gross annual sales or expenditures in order to demonstrate that they exceed \$25 million will be difficult, and requested guidance on methods to obtain annual sales figures. In response to this comment, EPA wishes to clarify that if a company wishes to have a manager of one or more manufacturing, production, or operating facilities sign industrial user reports, the company will be responsible for demonstrating that the facility (or facilities) for which the manager is responsible meet the \$25 million criterion. If the company is unable or unwilling to make this demonstration, the manager in question will not be

considered a "responsible corporate officer" under § 403.12(l)(1) (although, of course, he or she may still qualify as a "duly authorized representative" under § 403.12(l)(3)).

d. *Today's rule.* The final rule being promulgated today differs from the proposed rule in the following ways: (1) § 403.12(l)(3)(ii) now refers to the "company" instead of the "Industrial User;" (2) "superintendent" and "operator of a well or well field" have been added to § 403.12(l)(3)(ii); (3) the certification language in § 403.6(a)(2)(ii) now mirrors the NPDES language in 40 CFR 122.22(d); and (4) a provision consistent with 40 CFR 122.22(c), dealing with changes to authorizations, has been added. This final rule will ensure that indirect dischargers are subject to signatory requirements for reports that are consistent with those for direct dischargers.

D. 6. Reporting Requirements— Extension to Non-Categorical Discharges [40 CFR 403.12(h)]

a. *Existing rule.* Section 403.12 describes the reports industrial users subject to categorical pretreatment standards must submit. These reports, individually discussed in more detail elsewhere in this preamble, include baseline monitoring reports (BMRs) required under § 403.12(b), 90-day compliance reports required under § 403.12(d), and periodic compliance reports required under § 403.12(e). The purpose of these reports is to provide the Control Authority with information, together with additional data obtained through the Control Authority's own monitoring program, on the quantity and nature of discharges to the POTW and on the industrial user's compliance with applicable pretreatment standards and requirements.

b. *Proposed change.* The industrial categories for which categorical pretreatment standards have been and are being developed by EPA include those from which significant toxic pollutant discharges occur across the industry nationally. However, individual industrial users that are not covered by categorical standards ("non-categorical" industrial users) have the potential to discharge significant amounts of toxic pollutants to POTWs, resulting in water quality, sludge disposal or other problems. In addition, non-categorical industrial users may discharge other pollutants in quantities sufficient to cause serious interference or pass through problems at the POTW. Although the regulations generally require that such discharges be regulated by the POTW, they do not

specifically require non-categorical industrial users to submit reports to the Control Authority regarding their compliance with applicable pretreatment requirements.

The lack of any specific reporting requirements for non-categorical industrial users in the regulations has caused some confusion as to whether Control Authorities are expected to require reporting from these industrial users. Most POTWs currently require some reporting from their non-categorical industrial users as a means to have an effective compliance program; some POTWs require reports from all of their industrial users.

Although specific reporting requirements are listed only for categorical industrial users, it has never been EPA's intent to exempt non-categorical industrial users from all reporting requirements. One of the regulatory requirements for an approvable POTW pretreatment program is legal authority to require, from all industrial users, such reports as are necessary to assess and assure compliance with applicable pretreatment standards and requirements [§ 403.8(f)(1)(iv)]. This requirement is explicitly not limited to the specific reports required of categorical industrial users. Complete and accurate information on the quantity and nature of pollutant discharges to the sewer system by industrial users is essential if the POTW is to effectively regulate its users and prevent violation of pretreatment standards.

Because of the confusion on the reporting required of non-categorical users, EPA proposed to add a new paragraph (h) to § 403.12 (and redesignating the existing paragraph (h) accordingly) to clarify that the Control Authority must impose appropriate reporting requirements on its industrial users with non-categorical discharges. Control Authorities should use this authority to require sampling for pollutants not regulated by categorical standards where those pollutants may cause pass-through or interference. Of course, the appropriate monitoring and reporting to be required of non-categorical industrial users will vary depending on the circumstances. Factors to be considered include the size of the industrial user, the percentage of the POTW's total flow attributable to the industrial user, the nature of the industrial user's discharge (e.g., whether the industrial user is discharging pollutants of concern to the POTW), and the industrial user's compliance history. These and other relevant factors should

be considered by the Control Authority in establishing appropriate reporting requirements for its non-categorical industrial users. Under the proposal, if the Control Authority determines that reporting by these users is appropriate, the Control Authority would be required to impose monitoring and reporting requirements.

Industrial users subject to categorical pretreatment standards may also discharge significant amounts of pollutants that are not addressed in those standards. The proposal also applied to these industrial users. Under the proposed provision, the Control Authority must require appropriate reporting concerning all non-categorical discharges to the POTW, including those from industrial users that are otherwise subject to categorical standards.

c. Response to comments. Several commenters supported the requirements as proposed. Most of the commenters, however, had additional comments on the proposal.

Three commenters asserted that adequate authority already exists to require reporting from non-categorical industrial users and that therefore the proposed requirement is unnecessary. As stated in the preamble to the proposal, it is true that under the current regulations POTWs with approved pretreatment programs are required to have authority to require reports from non-categorical, as well as categorical, industrial users. Furthermore, State Control Authorities are required to have authorities at least as broad as those granted to EPA under section 308 of the Clean Water Act, which would include sufficient authority to require such reporting. Notwithstanding these existing authorities, however, there has been some confusion concerning whether Control Authorities were expected to require reporting from non-categorical industrial users, as was noted in the preamble to the proposal (and restated in today's preamble). The change being finalized today is warranted to dispel this confusion.

Several commenters emphasized that the Control Authority should have discretion in determining appropriate reporting requirements for non-categorical industrial users. EPA agrees. Under the new provision, it is the Control Authority who determines what is appropriate in a given case (i.e., what pollutants are to be covered, the level and frequency of reporting, etc.). This determination is, of course, subject to oversight by the Approval Authority, who may require additional monitoring and reporting where it feels this is warranted.

One POTW felt that unannounced POTW sampling of non-categorical industrial users is better than self-reporting for assessing compliance with local limits. It is perfectly acceptable to rely on POTW sampling instead of requiring self-monitoring and reporting by industrial users. (See discussion of POTW versus self-monitoring for categorical industrial users below.) POTWs must receive an appropriate level of information on non-categorical discharges to their systems to ensure that interference and pass through do not occur. If a Control Authority chooses to rely primarily on self-monitoring by the industrial user, then some reporting by the user will be necessary. If, however, the POTW performs all monitoring activities itself, there is no need to require additional reporting from the industrial user. The rule being promulgated today allows for this. Where the POTW performs all monitoring, it might be "appropriate" not to require any reporting by the industrial user, since the POTW would already have all the necessary information.

A State commenter suggested that non-categorical industrial users be required to submit semi-annual reports similar to those required in § 403.12(e) for categorical industrial users, thereby establishing a minimum monitoring frequency of twice per year. Because of the diversity of the non-categorical industrial user population, however, EPA prefers to leave the determination of what is appropriate reporting for a given industrial user to the Control Authority's discretion. Semi-annual monitoring and reporting may not be necessary for some users whose contributions to the POTW are truly insignificant. The commenter also mentioned that its suggested approach would be consistent with EPA guidance stating a recommended industrial user monitoring frequency of twice per year. However, this recommended frequency applies to "significant" industrial users (as defined in the "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986)), and was not intended to cover all users.

Two commenters appeared to be under the mistaken impression that the new requirement would automatically require reporting on all pollutants in an industrial user's discharge. This is not the case. The new provision simply requires the Control Authority to require appropriate reporting. This does not mean that all industrial users will be required to report on all pollutants in their effluents. It does mean, however, that where the Control Authority

determines that it is appropriate to require reporting on a particular non-categorical pollutant (i.e., because it has a reasonable potential for causing problems at the POTW), the Control Authority will be expected to require such reporting.

d. *Today's rule.* EPA is promulgating the final rule as proposed. Under the rule, Control Authorities must require appropriate reporting from their industrial users on discharges to the POTW of pollutants that are not covered under categorical pretreatment standards. The determination of what is appropriate is to be made on a case-by-case basis by the Control Authority (subject to normal Approval Authority oversight) based on such factors as the size of the industrial user, the volume of the industrial user's flow relative to the POTW's total flow, and whether the industrial user is discharging pollutants of concern to the POTW.

D.7. Notification of Slug Loadings [40 CFR 403.12(f)]

a. *Existing rule.* Section 403.12(f) requires industrial users to immediately notify the POTW to which they are discharging of any slug loading. A slug loading is defined in § 403.5(b)(4) as the discharge of any pollutant at a flow rate and/or pollutant concentration that will cause "interference" (as defined in § 403.3(i)) with the POTW. Section § 403.5(b)(4) specifically prohibits slug loadings. The notification requirement is intended to ensure that POTWs are promptly alerted to any loadings to their systems that would cause problems at the treatment plant. The language of § 403.12(f) and its location in a section that deals primarily with reporting requirements for industrial users subject to categorical pretreatment standards has raised questions about whether the slug load notification requirement applies only to categorical industrial users. Despite its location, EPA intended that this requirement apply to any such discharge by industrial users.

b. *Proposed change.* To clarify its intent, EPA proposed to change the language of § 403.12(f) to state that the slug load notification requirement applies to non-categorical, as well as categorical, industrial users.

The Agency also proposed to expand § 403.12(f) to reference all five of the specific prohibited discharge standards listed in § 403.5(b) (the "specific prohibitions") instead of only § 403.5(b)(4). EPA proposed this change because some slug loadings (e.g., sulfides) may not cause "interference" at the POTW (and thus are not within § 403.5(b)(4)), but are corrosive and hazardous to workers safety. The

proposed change would ensure that the POTW will be promptly notified of all discharges that might cause problems, including interference, at the POTW.

c. *Response to comments.* EPA received 14 comments on its proposed changes to the slug notification requirements. None of the commenters objected to EPA's proposal to clarify that § 403.12(f) applies to all industrial users, not just those which are subject to categorical standards. Several supported this aspect of the proposal based on the reasons given in the preamble to the proposed rule. POTW commenters who further explained their support stated that the clarification would reinforce their existing practices and/or ordinances. Finally, one commenter supported it on the general premise that the more information the POTW has about discharges to its system the better it can reduce the potential for such problems as dilution, pass through, interference, or undesirable contamination. EPA agrees with all these commenters and accordingly, is promulgating the clarification that the slug notification requirement applies to all industrial users as proposed.

Response to EPA's proposal to expand the notification requirement to include discharges which would violate any of the specific prohibitions in § 403.5(b) was divided. POTWs and the environmental group commenter generally supported the proposed expansion of this part of the notification requirements. However, some POTWs and all industry commenters objected to the lack of specificity in the proposed rule about when the notification requirement is triggered. Each of the commenters' various concerns about this issue are discussed below.

Initially, it would be useful to address some concerns which seem to be based on a misunderstanding about the purpose and effect of the proposal. One commenter read the proposal to require notification of any discharge which was significantly more than normal flow or concentration and stated that notification should be limited to discharges that interfere with the POTW's operation. Because of site-specific variables, the commenter suggested that it would be better for the industrial user and POTW together to determine which discharges were slug loads and therefore should be reported. Along the same lines, one POTW objected to the proposal as requiring notification of slug loadings that have no measurable impact, "e.g., a pH of 4.9 with a duration of 60 seconds."

These concerns are largely unfounded given the purpose and effect of the

notification requirement and the specific prohibitions. The proposed rule would require notification of slug loadings which could violate any of the specific prohibitions in § 403.5(b). The commonly understood meaning of "slug loading," which is reflected in the above comments, is a discharge which significantly exceeds the usual flow and/or pollutant loading (volume or concentration). Typical "slugs" involve batch discharges or accidental spills. Under the existing requirement, industrial users must notify the POTW only of slug loads that would violate § 403.5(b)(4) (i.e., those which would cause "interference"). "Interference" means a discharge which inhibits or disrupts the POTW's operation or processes and results in the POTW violating its NPDES permit or requirements applicable to the POTW's chosen sludge use or disposal methods. 40 CFR 403.3(i). (See, 52 FR 1586, January 14, 1987.) The proposed rule would require notification for slug loads which could violate any of the specific prohibitions listed in § 403.5(b). In addition to § 403.5(b)(4) covered by the existing regulation, two other specific prohibitions reference "interference" (§§ 403.5(b)(3) and (5)). The specific prohibitions which do not require "interference" (§§ 403.5(b)(1) and (2)) nonetheless address types of discharges which could significantly disrupt a POTW's system or threaten human health and safety, and potentially could result in violations of the POTW's NPDES permit or sludge requirements (e.g., corrosives, flammables). The commenter mistakenly suggests, however, that EPA is limited to requiring notification of discharges leading only to interference. In referencing all of the specific prohibitions of § 403.5(b), the Agency is ensuring the implementation of each of them, including those which do not specifically reference interference. The purpose of this notification requirement is to ensure that all industrial users will notify the POTW of any discharges that might cause problems, including interference at the POTW.

Immediate notification to the POTW of slug loadings that could violate any of the specific prohibitions allows the POTW, where possible, to take action to eliminate or discharge the likely adverse impact of slug loadings. Although it is conceivable that the rule could result in notification of slugs that ultimately have no measurable impact on the POTW, for example because of their extremely short duration, such instances will be the exception rather than the rule. Moreover, since the notification

requirements serve to supply the POTW with the information it would need to determine whether and how to institute preventive measures in response to the slug loading, this notification fulfills its purpose even where the effect of the slug is mitigated before it can actually cause harm at the POTW.

A major concern raised about the proposal was its apparent application (and consequently a user's potential liability for failure to notify) even where the user did not know that a slug loading either had occurred or would result in a violation of a specific prohibition. Some commenters requested that the notification requirements apply to slug loadings that are known to the industrial user (e.g., the notification requirements applicable to oil spills under the CWA or releases of hazardous wastes under CERCLA). Others stated it would be an undue burden on an industrial user to evaluate the impact of its discharge given the presence of other discharges or lack of information about the POTW's operation. For similar reasons, another commenter requested that the user be excused from liability for failure to notify if it were in compliance with existing Federal, State, and local discharge standards (a "safe harbor"). Finally, several commenters requested that the industrial user be required to notify the POTW only when their discharges exceeded predetermined limits set by the POTW or EPA (e.g., site-specific limits or a list of "reportable quantities" similar to that in 40 CFR Part 117).

In general, the industrial user is in the best position to know what its normal discharge is and when its discharge will be significantly greater in volume or strength (e.g., due to an upset, bypass, or accidental spill). In some cases, the likely effect of a particular discharge and therefore duty to notify is easy to ascertain (e.g., discharge of flammables, discharge that exceeds daily maximum discharge limits). In addition, an industrial user has an implicit, if not explicit, duty to assess the potential impact of its discharge to a POTW (as discussed in the preamble to the final rule promulgating the definitions of interference and pass through, 40 CFR 403.3(i) and (n) (52 FR 1590, 1595; 1598)). Therefore, it is appropriate, as well as consistent with the regulatory scheme, to hold the industrial user accountable for knowing its discharge activity and the likely effect of its discharge in the event of a slug loading.

The purpose of the notification requirement is not to accumulate evidence of non-compliance, but to give the POTW the opportunity to mitigate

any potential damage due to a slug loading. Therefore, it is not necessary to know with certainty whether a slug would indeed violate a specific prohibition. EPA agrees that the regulation could be clearer on this point. Thus, it has been redrafted to require notice of slug loads which could violate a specific prohibition.

EPA opposes a "safe harbor" for notification of a slug loading for essentially the same reasons set forth in the rule-making establishing the definitions of pass through and interference (52 FR 1590, January 14, 1987). Existing national categorical standards and local limits do not address all local environmental problems. Therefore, compliance with existing standards will not prevent pass through or interference due to, for example, spills, process changes, raw material changes, or other sources not identified by industrial users or anticipated by the POTW. While EPA agrees that site-specific limits are desirable and often necessary, many POTWs have not yet acquired the expertise necessary to set comprehensive local limits based upon a thorough analysis of the POTW's influent and capacity to treat it. Since it is unlikely that even site-specific limits will address all possible contingencies and pollutants, and since the purpose of notification is not to determine compliance but to facilitate POTW response to a slug load, a "safe harbor" provision would thus be inappropriate.

It is EPA's position that failure to properly assess the impact or likely effect of a slug load or to give notification for any other reason is no defense to an enforcement action for failure to notify. EPA does recognize, however, that there may be instances where a slug loading may occur without the knowledge of the industrial user. In such instances, lack of knowledge would be a factor in determining the appropriate enforcement response.

d. *Today's rule.* EPA is promulgating essentially the same rule as that which was proposed. Thus, it will require notification of any slug loading by categorical and non-categorical industrial users and will encompass all of the prohibitions of § 403.5(b). The only difference is that the final rule clarifies that industrial users are required to notify the POTW of any slug loading which could violate any of the prohibited discharge standards, whether or not such violation actually results.

D. 8. 90-Day Compliance Report [40 CFR 403.12(d)]

a. *Existing rule.* Within 90 days after the compliance date of a categorical

pretreatment standard, each existing industrial user subject to the categorical standard must submit to the Control Authority a report indicating whether the user is in compliance with the standard (§ 403.12(d)). New sources must submit this report within 90 days following commencement of discharge into the POTW. The report required by § 403.12(d) must contain information on the nature and concentration of regulated process pollutants in the industrial user's discharge, the average and maximum daily flow of these regulated process wastestreams and a signed statement indicating whether the user is in compliance with the applicable standard(s). If the user is not in compliance, the report must indicate the additional steps that are necessary to achieve compliance. The purpose of this report is to provide information that will allow the Control Authority to determine whether those industrial users subject to categorical pretreatment standards have met the applicable deadlines for compliance with these standards.

b. *Proposed change.* The information required in 90-day compliance reports is basically the same as that required for baseline monitoring reports (BMRs) (§ 403.12(b)), although the latter report must contain certain additional information. Under both reporting requirements, the industrial user must indicate the nature and concentration of regulated pollutants in the user's discharge, the flow of the user's regulated process wastestreams, whether the user is in compliance with applicable categorical pretreatment standards, and, if not, what steps are necessary to bring the user into compliance. (BMRs must also contain information identifying the industrial users, a list of any environmental permits held by the user, and a brief description of the user's operations.) Although this same basic information is required in both reports, the regulatory requirements for BMRs (§ 403.12(b)(4)-(6)) are much more detailed than those for the 90-day compliance reports in § 403.12(d). To better specify the information to be submitted in 90-day compliance reports, therefore, the Agency proposed to revise § 403.12(d) to specify the information required in these reports in the same detail as the equivalent BMR provision. The proposed revision did not change the existing requirements, but was merely intended to clarify the contents of the 90-day compliance report.

EPA also proposed to revise the BMR sampling requirements in § 403.12(b)(5) to require a minimum of one sampling

analysis. This same minimum would apply to 90-day compliance reports. As with BMRs, the Control Authority may require additional sampling and analysis where necessary to obtain representative data sufficient to determine compliance.

EPA further proposed another amendment to § 403.12(d). For those industrial users subject to categorical pretreatment standards expressed only in terms of mass per unit of production, it is imperative that the Control Authority have current production data in order to determine whether compliance with the standard has been attained. Although all industrial users are required to include production data as part of the baseline monitoring report (§ 403.12(b)(3)), this data may be outdated by the time the compliance report required under § 403.12(d) is submitted (usually several years later). Therefore, the Agency proposed to amend § 403.12(d) to require that these reports also contain the industrial user's current actual average production rate. This will ensure that the Control Authority has up-to-date production data for determining whether the deadlines for compliance with applicable production-based standards have been met.

c. Response to comments. None of the commenters were opposed to referencing the more detailed language of § 403.12(b)(4)-(6) in § 403.12(d). However, one industry commenter suggested extending the proposal to include § 403.12(b)(7), which requires that industrial users that are not in compliance with the categorical standard at the time the BMR is submitted must include in the report the shortest schedule by which additional pretreatment and/or operation and maintenance (O & M) required to achieve compliance will be provided. Section 403.12(b)(7) states that the completion date given in a BMR for installing additional necessary pretreatment equipment or providing additional O & M may not be later than the compliance date for a particular categorical standard. This provision is not applicable to the 90-day compliance report under § 403.12(d), since these reports are submitted after the compliance date. Section 307(d) of the CWA makes it unlawful to violate a categorical standard after its compliance date; thus, EPA cannot provide in its regulations for industrial users to establish schedules for coming into compliance after the compliance date.

One industry and one POTW were opposed to the proposed requirement for

the industrial user to include a current average production rate in the 90-day report. The industrial commenter pointed out that requiring current production data in 90-day reports would be inconsistent with the NPDES regulations, and would result in limitations changing every day that the production rate changes. One commenter felt that the required production data should be changed to "representative average daily production," consistent with the language proposed for § 403.6(c)(3) (see II.A.1. above), to facilitate direct comparison to the production rate on which equivalent limits calculated under § 403.6(c)(3) are based.

For industrial users for whom the Control Authority has established equivalent mass-per-day or concentration limits under the procedures in revised § 403.6(c), EPA agrees that the production rate included in the 90-day report should be based on the same measure (i.e., long-term average) as the production rate used by the Control Authority in establishing the equivalent limits. This is the production data necessary to determine whether the user is in compliance with the applicable categorical standard, since the equivalent limits are enforceable in lieu of the standard itself. For other industrial users, however, the production data necessary for determining compliance, and therefore the data that must be reported in the 90-day report, is the production corresponding to the period during which the sampling for the report was performed. EPA recognizes that the proposal was not clear on this point, and is modifying the language of the final rule accordingly.

A POTW commented that production rates for new sources within 90 days of commencement of discharge are rarely indicative of future peak rates, and are therefore not useful. With respect to new sources, the Agency agrees that a production rate based on 90 days of production may not accurately reflect future peak rates, but disagrees with the commenter's assertion that this renders such data useless. Although it may not be indicative of future long-term production rates, the 90-day data does give the Control Authority some actual data on the industrial user's production level data necessary to assess compliance. Additionally, for Control Authorities that have established equivalent limits under the revised § 403.6(c) being promulgated today (see II.A.1. above), this data will be important for verifying projected

production rates provided by the industrial user.

A State, industry and trade association commented that production data should be required only for industrial users subject to production-based standards. EPA agrees with this comment and the final rule contains this qualification.

One POTW commented that the POTW should have discretion to require the BMR information in industrial user reports. However, it appears that this commenter was confusing the 90-day report with the periodic report under § 403.12(e), since the commenter referred to a semi-annual determination of what should be contained in the report.

An industry commenter suggested allowing for a different reporting schedule (i.e., over 90 days) if expressly agreed to by the Control Authority. The issue addressed by this comment was not part of the proposed rule and is thus beyond the scope of this rulemaking.

d. Today's rule. EPA is promulgating the final rule as proposed with respect to referencing the requirements in §§ 403.12(b)(4)-(6) and 403.12(d). The final rule differs from the proposal in that it specifies that for industrial users subject to equivalent mass or concentration limits established by the Control Authority under the procedures in revised § 403.6(c), the 90-day compliance report must include a reasonable measure of the user's long-term production rate. For users not subject to such equivalent limits, the production rate included in the 90-day report is to be the actual production during the sampling period.

D.9. Industrial User Compliance Reports—Monitoring Requirements [40 CFR 403.12(g)]

a. Existing rule. Under the current General Pretreatment Regulations, industrial users subject to categorical pretreatment standards must submit compliance reports in June and December (or more frequently as required by the Control Authority) (§ 403.12(e)). These reports must contain information on the nature and amount of pollutants that are subject to the categorical standard(s) in the industrial user's effluent. The industrial user must also include measured or estimated average and maximum daily flows for the reporting period, or more detailed flow information as required by the Control Authority. Section 403.12(g) provides that these compliance reports must contain the results of sampling and analysis of the industrial user's discharge, but does not specify the

amount of sampling and analysis that must be performed for each report. Nor do the categorical standards contain such monitoring frequency requirements.

b. *Proposed change.* Although the pretreatment regulations do not specify the amount of monitoring required in these reports, POTWs may, of course, specify monitoring frequencies in their own sewer use ordinances and individual industrial user permits. Many POTWs have in fact done this. However, the lack of any monitoring frequency requirements, either in the General Pretreatment Regulations or the categorical pretreatment standards, has resulted in some confusion as to the amount of monitoring required for periodic compliance reports under § 403.12(e).

Therefore, to establish a minimum acceptable level of monitoring for the periodic compliance report, the Agency proposed to revise § 403.12(g) to clarify that the reports required under § 403.12(e) must be based on an appropriate amount of sampling and analysis performed during the period covered by the report. Implicit in § 403.12(e) is that each biannual report contain at least some data for the period covered by the report.

The appropriate monitoring frequency for indirect dischargers will vary from facility to facility, and must be determined by the Control Authority on a case-by-case basis. In making this determination for a particular industrial user, the Control Authority should consider the monitoring frequency considered by EPA in developing, and determining the costs associated with, the applicable categorical standard. This information can be found in the preamble and/or development document accompanying each categorical standard. The Control Authority should also consider such factors as the size of the industrial user's flow and the user's compliance history. Control Authorities may also choose to consider the monitoring frequency that would be imposed on a similar direct discharger in its NPDES permit. Ultimately, the choice is the Control Authority's. EPA would like to clarify that this is not a substantive change to existing requirements. By its lack of specificity, the Agency intended to require that each report be based on an appropriate amount of sampling for the particular industrial user. However, today's rule should eliminate any confusion.

EPA proposed two additional changes to § 403.12(g). The first was a provision requiring that all monitoring performed by the industrial user be reported in the compliance reports under § 403.12(e).

Industrial users, like other dischargers, may monitor more frequently than required by the regulations or the Control Authority. The proposed revision would prevent an industrial user that performs extra sampling from selecting the most favorable monitoring results to report to the Control Authority. Otherwise, dischargers whose sample indicates a violation could perform additional monitoring once compliance is attained and report only the latter results. Clearly, the intent of self-monitoring is that all monitoring be reported. This provision is consistent with § 122.44(i) of the NPDES regulations, which requires that permittees report all monitoring results.

The Agency also proposed to add a provision stating that if sampling and analysis performed by the industrial user indicates a violation, the user must repeat the sampling and analysis and submit the results of both analyses to the Control Authority within 21 days. This provision would allow the Control Authority to detect patterns of continuing noncompliance by its industrial users, and thus assist in distinguishing single events from chronic noncompliance.

c. *Response to comments.* The proposed changes generated a significant amount of comment from POTWs, industry, States, an environmental group, and others. Most of the commenters were generally supportive of the changes, although many offered suggestions for improving the proposal.

1. *Monitoring frequency.* Most of the commenters on this issue supported the change as proposed. Those who did not were generally concerned with the lack of any minimum monitoring frequency requirement in the regulations, and recommended specific frequencies ranging from once per compliance report (i.e., once every six months) to the frequency used in the economic analysis for the applicable categorical standard (which can be as high as several times per week). However, none of these commenters provided specific support for its recommended frequency, other than to say that it would ensure an "adequate amount of sampling," that any longer frequency would "allow violations to continue undetected (and unabated) for too long," or that Control Authorities need frequent self-monitoring because they do not have sufficient resources to detect violations independently. One commenter asserted that it is inappropriate to give Control Authorities discretion in determining industrial user monitoring frequencies because they did not participate in the development of the categorical

pretreatment standards and do not have sufficient expertise to determine all of the variables that could influence a discharge at a particular facility. The commenter, a member of PIRT, noted it was this concern that led the task force to recommend that EPA provide Control Authorities with guidance on appropriate monitoring frequencies. (See, "PIRT Report", pp. 18-19.) EPA appreciates the concerns of those commenters recommending specific monitoring frequencies for industrial users. However, the Agency is also mindful of the fact that the appropriate monitoring frequency may vary considerably from industrial user to industrial user, and is thus hesitant to add a specific minimum frequency to the regulations. Instead, in response to PIRT's recommendation EPA has included guidance on this issue in the "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986) (see, pp. 2-11 to 2-15). This guidance document lists a number of factors for Control Authorities to consider in determining an appropriate monitoring frequency, including the industrial user's compliance history, impact on the operation of the POTW, water quality impacts on the receiving stream, the industrial user's discharge flow rate, and cost. The guidance also provides recommended self-monitoring frequencies to be used as a starting point in developing longer-term requirements. These recommended frequencies range from once per month to three times per week for conventional pollutants, inorganic pollutants, cyanide, and phenol, and twice per year to four times per month for organics, depending on the industrial user's flow. As is emphasized in the guidance, these are suggested frequencies to be adjusted depending on the circumstances of a particular industrial user. This approach of providing guidance on monitoring frequencies is preferable to establishing specific regulatory requirements. The combination of this guidance and a regulatory provision requiring an appropriate amount of monitoring by industrial users assures that Control Authorities have sufficient information for determining and incentive for establishing proper monitoring frequencies for their industrial users.

2. *Requirement to report all monitoring data.* Several POTWs supported the change as proposed. Most of the commenters, however, expressed concern about the scope of the requirement. Specifically, several commenters objected to the requirement to submit all monitoring data collected during the reporting period, arguing that

without some qualification this could require submittal of data not relevant to an industrial user's effluent quality. Another commenter pointed out that the additional monitoring data should be allowed to be submitted in summary form to avoid having to submit large volumes of data from, for example, automatic pH control systems with continuous readout, where a compilation would be adequate. With this same concern in mind, one commenter recommended that the proposal be modified to parallel more closely the comparable provision in the NPDES regulations (40 CFR 122.41(1)(4)(ii)), which requires permittees monitoring more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 (or as otherwise specified in the permit), to include the results of this additional monitoring in their discharge monitoring reports. EPA agrees that the pretreatment provision should be consistent with the NPDES provision, and has modified the final rule accordingly. This modification should adequately address the concerns of those commenters who found the scope of the proposal to be too broad with respect to the data required to be submitted.

Commenters raised two additional concerns with the proposed requirement to report the result of all monitoring. The first is that such a requirement would be difficult to enforce. EPA is aware of the inherent difficulties of enforcing this requirement. However, in the Agency's judgment this is not by itself a sufficient reason not to include such a requirement in the regulations, particularly in light of the fact that without such a requirement, industrial users may legally select for submission to the Control Authority that monitoring data most favorable to them, depriving the Control Authority of a representative picture of the industrial user's compliance status. In extreme cases, this could allow an industrial user to submit only that data showing compliance, even though additional monitoring data shows noncompliance.

The other additional concern, which was raised by a number of commenters, is that industrial users performing additional monitoring would be penalized by having to report the results of this monitoring, and that the requirement would therefore act as a disincentive to additional monitoring. Although this argument may be facially appealing, EPA is not aware of any such disincentive effect resulting from the parallel NPDES provision, and is thus not persuaded that this would occur in the pretreatment context. Moreover,

industrial users whose required amount of monitoring indicates noncompliance will still have an incentive to perform additional monitoring in order to demonstrate that the noncompliance has been corrected or is not as serious as it may appear based solely on the required amount of monitoring.

Finally, one POTW suggested that instead of having to submit all monitoring data, industrial users should only be required to make the additional data available to the Control Authority upon request. Industrial users subject to the reporting requirements of § 403.12 are already required to retain all monitoring data for three years (or longer if required by the State Director or the Regional Administrator of EPA). However, the purpose of the proposed revision is to make these data available in the periodic reports submitted by industrial users so that the Control Authority can consider them in evaluating industrial user compliance without having to make a special request for them. EPA feels the proposed revision is warranted to accomplish this purpose.

3. Resampling requirement. This issue generated the most comment of any issue concerning the proposed revisions to § 403.12(g). Several commenters supported the provision as proposed. Most, however, while supporting the basic concept, disagreed to some extent with its proposed implementation. A small number of commenters opposed the resampling idea for a variety of reasons.

Several commenters addressed the 21-day period for resampling and submitting the results of the original and repeat samplings to the Control Authority. Two of these commenters asked for a clarification that the time period starts to run upon the industrial user's receipt of the results of the original sampling showing a violation. This was the intended meaning of the proposal, and EPA has modified the final rule to clearly state this.

Most of the commenters addressing the 21-day period asserted that 21 days is too short because it does not adequately account for lab turnaround and time in transit. Based on EPA's experience, the 21-day period is not unachievable. Several commenters noted that this period would require accelerated analysis at certain labs, which could add substantial premiums to the regular cost of analysis, thus placing an unreasonable financial burden on the regulated industry. EPA wishes to remind these commenters that under the proposal, resampling is required only where there is a document

violation of an applicable pretreatment standard, and thus should not be treated as routine monitoring. In the Agency's view, it is not unreasonable to require industrial users that have violated applicable standards to go to special lengths to resample their effluent to facilitate evaluation by the Control Authority of the seriousness of the violation. At the same time, however, the Agency does not want to impose on industrial users requirements with which it is impossible or unreasonably difficult to comply. Although it is possible to comply with the 21-day period, this may be unreasonably short in some instances. The Agency has therefore extended the time period in the final rule to 30 days. Little, if any, expedited handling should be necessary to meet the modified deadline, and any that might be required is deemed by the Agency to be warranted by the fact that a violation has already occurred.

Several commenters objected to the resampling requirement, arguing that a determination of what, if any, resampling is necessary is properly left to the Control Authority's discretion. While Control Authorities should generally be given a large measure of discretion in determining sampling requirements for their industrial users, the sampling requirement is nevertheless warranted in order to ensure that a minimum amount of data will be available regarding all violations of pretreatment standards. Moreover, the resampling requirement does not, contrary to a suggestion by one of these commenters, undermine the Control Authority's determination of an appropriate monitoring frequency. The requirement deals not with routine monitoring and its frequency, but rather with gathering a minimal amount of additional data where violations are revealed by such monitoring. It should not have any adverse effect on the Control Authority's determination of monitoring frequencies.

On a related issue, one POTW commented that for POTWs that monitor their industrial users monthly the resampling requirement within 30 days would be duplicative. EPA agrees that where the Control Authority monitors an industrial user at a frequency of at least once per month, resampling by the industrial user is not necessary, since the Control Authority will always have data from consecutive sampling that are not more than 30 days apart (the same period allowed under the proposed requirement). Indeed, even if the Control Authority monitors the industrial user at a lower frequency than once per month, if a Control Authority

monitoring event occurs between the industrial user's original sampling and the user's receipt of results from this sampling, the industrial user should not have to resample because the Control Authority will already have its own "resampling" data to compare to the user's data. Accordingly, EPA is modifying the requirement to allow for this. Of course, if the Control Authority does not perform its own monitoring until after the industrial user has received results of its own sampling indicating a violation, and the Control Authority is not monitoring on at least a monthly basis, the industrial user will have to resample and submit both results within the 30-day time period.

Only two commenters, one State and one municipality, responded to EPA's solicitation of comments regarding the scope of the resampling requirement (i.e., whether the requirement should apply to all industrial users or to some group, such as categorical users). (Another State misunderstood the Agency to be soliciting comment on the scope of the biannual reporting requirement itself.) Both commenters recommended limiting the requirement to categorical industrial users, while allowing the Control Authority to extend it to other users. The State provided no specific justification for its position. The city cited the "unnecessary cost" of an all-inclusive requirement, but failed to offer any explanation of why the cost would be unnecessary. Based on this limited response, EPA is not persuaded that the resampling requirement should apply only to categorical industrial users. Applying the requirement to all users should not result in "unnecessary cost" or other undue burdens. EPA fails to see why resampling for violations of local limits is any less necessary than for violations of categorical standards. Moreover, as noted above, the need to resample can be avoided altogether simply by maintaining compliance. Therefore, the Agency has drafted the final rule so as to apply to all industrial users whose self-monitoring discloses a violation of applicable pretreatment standards.

Several commenters recommended requiring industrial users to notify the Control Authority of violations without waiting for the results of resampling. Suggested time periods for such notification ranged from immediately to within 5 days of receipt of the sampling results. An industry commenter suggested modifying the proposal to parallel 40 CFR 122.41(1)(6) of the NPDES regulations, which requires oral notification of certain violations within 24 hours, followed by written

notification within 5 days. One city even suggested requiring submission of *all* monitoring results (not just violations) within 30 days of collection.

EPA agrees with the concept of requiring prompt notification of violations without waiting until the resampling results are received. As noted by one commenter, this would give the Control Authority flexibility to take whatever other steps might be necessary, including performing its own monitoring, without imposing an unreasonable additional burden on the industrial users. For serious violations that might endanger health (e.g., of workers at the POTW) or the environment (e.g., through impacts on receiving water), prompt notification to the Control Authority is particularly important, and is not required under any existing provision of the pretreatment regulations (see, II.D.7., above). Therefore, EPA is modifying the final rule to require, in addition to the resampling discussed above, notification of violations to the Control Authority within 24 hours of the industrial user becoming aware of the violation. This notification may be either oral or written, and will be followed up by the resampling results within 30 days. Like the resampling requirement, this notification requirement will apply to all industrial users.

Finally, an industry commenter suggested a relatively complex scheme involving different submission deadlines depending on whether the limit violated is a daily maximum or other (e.g., monthly or weekly) limit. Although it was not clearly stated in the proposal, the resampling requirement is intended to apply only to daily maximum limits in the categorical pretreatment standards. Because monthly and weekly limits are based on *averaging* sampling results, a single sampling event will not necessarily demonstrate whether the industrial user is in compliance.

d. *Today's rule.* EPA is promulgating the rule as proposed, with the following modifications. First, under the final rule the only results of additional monitoring performed by the industrial user that must be included in the periodic reports required under § 403.12(e) are those arrived at using test procedures approved under 40 CFR Part 136 or approved alternatives. This is consistent with the comparable requirement in § 122.41(1)(4)(ii) of the NPDES regulations. Second, the time period for resampling and submitting both sets of results has been extended to 30 days to allow sufficient time for transmittal time and lab turnaround. Third, where the Control Authority monitors at least once

a month, or monitors between industrial user sampling and receipt of results of the sampling, the industrial user is not required to resample. Fourth, the final rule clearly states that the 30-day period starts to run on the industrial user's receipt of the results of its original sampling. Finally, in addition to the resampling requirement, the final rule also requires industrial users to notify the Control Authority within 24 hours of any violation of an applicable pretreatment standard. This last requirement ensures that prior to its receipt of the results of the industrial user's resampling, the Control Authority will be in a position to take whatever additional actions may be necessary or appropriate in response to the reported violation(s).

D.10. Self Monitoring vs. POTW Monitoring [40 CFR 403.12(g)]

a. *Existing rule.* Industrial users are required to perform certain sampling and analyses for purposes of preparing the various reports described in § 403.12 (the baseline monitoring report, 90-day compliance report, and periodic compliance reports). (See, § 403.12(g).) The Control Authority is also required to conduct its own independent compliance monitoring program (see, § 403.8(f)(2)(v)). In addition, States and EPA periodically sample industrial users. These industrial user reports based on the results of self-monitoring are the primary means by which Control and Approval Authorities determine compliance with pretreatment standards. However, compliance sampling by Control and Approval Authorities is used primarily as a periodic check on the industrial user's monitoring and to generate additional data for enforcement.

b. *Proposed change.* PIRT recommended that § 403.12 be amended to expressly allow POTW monitoring in lieu of self-monitoring by industrial users. According to the Task Force, some POTWs have indicated they would prefer to base their compliance program on sampling and analysis they perform themselves rather than on self-monitoring by industrial users because the reports submitted by some industrial users are not reliable. PIRT also noted that some industrial users would prefer that the POTW conduct the monitoring procedures. The General Pretreatment Regulations were not clear as to whether this is allowed.

In response to PIRT's recommendation, EPA proposed to amend § 403.12(g) to allow the Control Authority to perform the sampling and analyses required for baseline

monitoring reports, 90-day compliance reports and periodic compliance reports in lieu of the industrial user. POTWs choosing to perform their own sampling and analyses for purposes of the reports in § 403.12 must perform at least the same amount of sampling and analysis as is required of industrial users.

Where the Control Authority chooses to perform the required sampling and analysis itself, the industrial user would still have to submit any other information required by the applicable paragraph of § 403.12. For example, where the Control Authority is performing the sampling and analyses otherwise required of the industrial user for a BMR, the user would still be required to submit the identifying information, list of environmental permits, production information and description of operations described in § 403.12(b)(1)-(3). The user would also remain responsible for providing the Control Authority with the compliance certification described in § 403.12(b)(6) and, if necessary, the compliance schedule described in § 403.12(b)(7).

EPA also clarified that where it chooses to monitor in lieu of the industrial users, the Control Authority is not bound by the July and December reporting frequency for periodic reports in § 403.12(e). Under § 403.12(e), the Control Authority has the discretion to alter the months during which these reports are to be submitted, and thus the months during which it must perform the required sampling and analysis.

c. Response to comments. EPA received comments on this issue from several POTWs, two industries, a State and one trade association. All of the commenters supported the proposal. Several commenters also had additional suggestions for implementing PIRT's recommendation.

One POTW recommended that the proposal be expanded to eliminate the need for industrial users to automatically submit the 90-day and periodic compliance reports (§§ 403.12(d) and (e), respectively), because in most cases flow data is not essential to the POTW unless production or mass limits are used. The commenter also questioned whether the industrial user can certify its compliance status based on monitoring data generated by the POTW. Finally, the commenter recommended that if the reports are to remain mandatory, this fact should be clearly stated in the regulation itself. EPA first wishes to point out that flow data is important even where the industrial user is subject only to concentration limits. Under § 403.6(d) of the pretreatment regulations, dilution is prohibited as a

partial or complete substitute for adequate treatment to achieve compliance with pretreatment standards (see ILA4., above). Dilution may occur without a significant increase in the concentration of a particular pollutant in an industrial user's effluent. It is thus important that the Control Authority have flow data to detect possible dilution; concentration data alone may not reveal dilution, because the concentration may stay substantially the same while the flow increases. However, in some cases the POTW may perform the necessary flow measurement as well as all other sampling and analysis required for the report. In such cases, EPA agrees with the commenter that it is not necessary for the industrial user to submit a separate report, because the POTW already has all relevant information. EPA also agrees with the commenter that industrial users should not be expected to certify to their compliance status based on data collected by the POTW. The Agency is modifying the final rule to provide that this certification will not be required where the POTW performs all of the required monitoring. In response to the commenter's final concern that the regulations should clearly state whether the industrial user will be required to submit a report when the POTW is performing the required monitoring, the Agency is also modifying the final rule to provide that where the POTW collects all the data required under § 403.12 for a 90-day or periodic report, including flow data, the industrial user will not be required to submit the report. In such cases, submittal by the industrial user would be unnecessarily duplicative.

An industry commenter recommended providing the industrial user with the right to obtain split samples and results of any analyses conducted by the Control Authority. While EPA understands the commenter's concern for verification of analyses performed by the Control Authority, a specific regulatory provision to this effect is not necessary. If the industrial user wishes to receive split samples or other data on its discharge collected by the Control Authority, it should make this request directly to the Control Authority. Some POTWs already provide their industrial users with such information. For purposes of the federal regulations, however, EPA feels it is sufficient to require that adequate sampling, analysis and reporting be performed, and to allow this monitoring and reporting to be performed by either the industrial user or the POTW.

Another industry commenter conditioned its support of the proposal on EPA's clarifying that the amount of monitoring performed by the POTW in lieu of the industrial user should be based on the same criteria that would be used by the POTW to determine the appropriate monitoring amount for the industrial user if self-monitoring were relied on. POTWs have wide latitude in devising appropriate monitoring requirements for their industrial users. The revisions to § 403.12(g) being promulgated today (see ILD.9., above) require that for periodic compliance reports under § 403.12(e), the frequency of monitoring required is that which is necessary to assess and assure compliance by the industrial users. This criterion applies whether the monitoring is performed by the industrial user or the POTW. For more detailed guidance on monitoring frequencies and other aspects of compliance monitoring and enforcement, see EPA's "Pretreatment Compliance Monitoring and Enforcement Guidance" (1986).

The industry trade association commented that POTWs electing to perform monitoring in lieu of their industrial users should be required to follow appropriate procedures, including chain-of-custody and QA/QC requirements. Section 403.8(f)(2)(vi) of the regulations already requires that sampling and analysis be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions. Satisfying this requirement necessarily entails the use of proper monitoring procedures. Therefore, no additional requirement is necessary.

Finally, a POTW commented that to be compatible with cost recovery requirements in the federal construction grants regulations, POTWs monitoring in lieu of their industrial users should be required to recover those costs directly from the monitored industrial user. EPA disagrees with the commenter. POTWs with approved pretreatment programs are already required to perform monitoring of their industrial users to independently determine whether the users are in compliance with applicable pretreatment standards and requirements. (See, § 403.8(f)(2)(v).) Moreover, there is nothing in the federal regulations, including the grants regulations, that requires such cost recovery for such monitoring, and EPA declines to add such a requirement to the pretreatment regulations. Of course, the regulations do not prohibit a POTW from charging its industrial users for monitoring it performs.

d. *Today's rule.* EPA is promulgating the final rule as proposed, with the following modifications. The final rule provides that where the POTW performs all of the required sampling and analysis, the industrial user will not be required to submit a compliance certification. In addition, the final rule provides that where the POTW collects all of the data required for the report, the industrial user is not required to submit the report. (Of course, the POTW may impose additional or more stringent reporting requirements than those in the federal regulations.)

D.11. Notification by Industrial Users of Changed Discharge [40 CFR 403.12(j)]

a. *Existing rule.* Under 40 CFR 122.42(b)(2) of the NPDES regulations, POTWs are required to notify their permitting authority of any substantial change in the volume or character of pollutants being introduced into the POTW by its industrial users. This notification allows the NPDES permitting authority to determine whether additional limits are needed in the POTW's permit because of industrial user discharges to the POTW. Of course, in order to fulfill this requirement, the POTW must obtain the necessary information from its industrial users. Although industrial users must submit semi-annual compliance reports describing the nature and concentration of pollutants regulated by categorical standards (§ 403.12(e)), the current pretreatment regulations do not require all industrial users to notify the POTW of any substantial change in their discharges to the POTW. Accordingly, there currently is no mechanism in the general pretreatment regulations for POTWs to obtain the information necessary to comply with § 122.42(b).

b. *Proposed change.* EPA proposed to add a new paragraph (j) to § 403.12 requiring all industrial users to promptly notify the POTW of any substantial change in the volume or character of pollutants in the user's discharge to the POTW. This would ensure that the POTW has the necessary information to meet its obligation under § 122.42(b)(2).

c. *Response to comments.* Nearly all commenters, including POTWs, affected industries, and one environmental group, supported the proposed rule. Several POTW commenters noted that they already required such notification from their industrial users. About half of the commenters, however, expressed concern about the subjectivity of the term "substantial" in the proposed rule and/or offered suggestions on quantifying the term. One industry commenter flatly opposed the proposed rule as an unnecessary burden on

POTWs and industrial users, unless the reporting requirement was limited to changes in the industrial user's discharge which exceed permit limits.

The proposed rule is necessary regardless of whether the change in the industrial user's discharge would cause it to violate limits in its permit or other control mechanism. The purpose of this reporting requirement is not to collect information on users' noncompliance, but to establish a procedure for POTWs to receive timely information on changes to industrial contributions to its system (including changes in pollutant loadings that may not be specifically regulated by a current control mechanism) so that the POTW can comply with the notification requirements of its NPDES permit. EPA does not understand how this can be a burden to POTWs and none objected to receiving this information. In fact, the comments from POTWs indicate that the kind of reporting envisioned by the proposed rule is already commonly required by POTWs. This suggests that for many industrial users, the rule will not impose additional burdens.

Just as importantly, the information on changed discharges will allow a POTW responsible for implementing a local pretreatment program to determine whether it needs to consider adjustments to its local limits based on changed characteristics or volume of wastewater in its system. As discussed above (see IIA.2.), POTWs with approved programs are required to have local limits which implement the general and specific prohibitions in § 403.5(c) and to update them as necessary. EPA does not anticipate that the industrial user's report of changed discharge alone will be a sufficient basis to adjust limits, but will provide the POTW with relevant information to determine if the adequacy of local limits should be reevaluated.

An industrial user is required to promptly notify its POTW of any substantial change in the volume or character or pollutants discharged to the POTW. This notification requirement is in addition to other reporting requirements in the General Pretreatment Regulations, such as regular compliance reporting in § 403.12(e). Users are required to notify the POTW of a substantial change in any characteristic of the User's wastewater discharge including volume of flow, the amount or concentration of regulated (under categorical standards or local limits) or unregulated pollutants, and the discharge of new pollutants not previously reported to the POTW.

As explained in the preamble to the proposed rule, the purpose of the

"changed discharge" notification is to ensure that the POTW has the necessary information to comply with the notification requirements in its NPDES permit required by 40 CFR 122.42(b)(2). After the POTW receives the relevant information from an industrial user, the POTW is responsible for passing this information along to the NPDES permitting authority together with information about the anticipated impact of the change on the quantity or quality of the effluent to be discharged from the POTW (§ 122.42(b)(3)). Based upon this and other relevant information (e.g., notice of newly-connected users to the POTW's system), the NPDES permitting authority can determine whether the POTW's NPDES permit limits should be changed to adequately control pollutant discharges from the POTW. In addition, the POTW can use the same information to determine whether it needs to change controls on the wastewater entering the treatment works (or take other appropriate measures) to adequately protect its system and receiving water quality.

The comments received by EPA suggested a wide range of possibilities for defining "substantial change." In addition to requiring notice only when permit limits are violated, these suggestions include: Changes of more than 50 percent, deviations of 25 percent or more, a flow increase of more than 1500 gallons per day resulting from process modifications or increased size or number of facilities, and a change of 20 percent or more from previously reported values (consistent with EPA's "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula" (1985)). One commenter, suggesting a possible quantification, also noted that "substantial change" may have to be defined by the POTW on a case-by-case basis depending on the particular pollutant and the amount of flow contributed by a particular user.

Neither the POTW's requirement to notify its NPDES permitting authority about substantial changes in its industrial users' contributions (40 CFR 122.42) nor existing Agency guidance define "substantial change" for this provision. While EPA agrees that there is a legitimate need for guidance on the meaning of this term, it has determined that a regulatory definition of "significant change" is inadvisable because, as noted by one commenter, what is substantial in a given situation will depend on several variables, particularly the type of pollutant being discharged and the percentage of flow

contributed by the discharger. To preserve necessary flexibility, EPA declines to adopt one specific measure as suggested by several commenters. Instead, for purposes of this regulation, "substantial change" should be determined by the comparable notice requirements for direct dischargers under the NPDES regulations and supplemental, or more stringent, notice requirements adopted by the POTW or required by the permitting authority in the POTW's NPDES permit.

As suggested by the purpose of the changed discharge notification, only changes which the industrial user expects to occur on a regular or routine basis over an extended period of time (three months or more) need to be reported. Sporadic or episodic changes in the volume or character of a discharge are not covered by the changed discharge notification. (However, depending on the circumstances, the industrial user may have to report these discharges in accordance with other pretreatment requirements, e.g., the "slug load" notification requirements (§ 403.12), the upset provision (§ 403.16), or bypass provision (§ 403.17) discussed at Parts II.D.7., II.E.4., and II.E.5., of this preamble, respectively.) In most cases, a substantial change in the volume or character of a user's discharge will result from a deliberate or planned change to the user's facility or operations. Accordingly, the industrial user should notify the POTW as soon as it knows of plans to change its facilities or operations which will affect its discharge. In no case should the POTW be notified later than when the changed discharge occurs. Industrial users need only notify the POTW of "substantial changes" in the volume or character of pollutant discharges to the POTW. Industrial users should know the volume and characteristics of their pollutant discharges to a POTW and if their discharges have or will change in the future on a regular basis. However, as discussed above, determining whether a change is "substantial" may depend on several other factors. For purposes of the change discharge notification requirement promulgated today, "substantial" should be based on the magnitude of change to the industrial user's existing discharge and not on the anticipated effect of the changed discharge on the POTW. Therefore, absolute numbers such as an increase or decrease of X gallons of flow discharged would not be appropriate. Although this approach may result in notifications about changed discharges which will not have a demonstrable effect on the POTW's influent, effluent or sludge

quality, EPA has determined that any incidental "over notification" is justified by the need of the POTW (and NPDES permitting authority) to have information on a timely basis to determine whether, considering other changes to the POTW's system or pollutant control requirements, new limits on pollutant discharges are necessary or should be further evaluated. Note, however, a POTW may have other legitimate reasons for requiring industrial users to notify the POTW of changes in the volume or characteristic of their wastewater flow. Today's rule does not negate such local notice requirements.

Because comparable NPDES notification requirements use the "discharger's perspective" approach, they should be considered general guidance for determining when an industrial user should notify the POTW of changed discharges. For example, § 122.41(l)(1) requires a discharger to give notice as soon as possible of "any planned physical alterations or additions to the permitted facility * * * when (i) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source * * * [see § 403.3(k), as amended by today's final rule]; or (ii) the alteration or addition could significantly change the nature or increase the quantity of pollutants [or flow for pretreatment program purposes] discharged" for pollutants which are not specifically limited in the permit or subject to specific notification requirements. For toxic pollutants which are not specifically limited, the discharger must give notice of any activity which has occurred or will occur that would result in a changed discharge which will exceed the notification levels specified in § 122.42(a)(1).

Discharges which are specifically regulated are subject to different rules. Dischargers who are subject to production-based standards should use the notification levels established in § 403.6(c) (as amended today) for determining when a change in the user's flow or production compels notice to the POTW of the changed discharge. The comparable NPDES notification requirements should serve as general guidance of the minimum requirements for notifying the POTW of a changed discharge under today's final rule. Of course, a POTW may further refine the notification requirements to take into account site specific factors such as the percentage of total flow or pollutant loading contributed by a particular discharger. Most POTWs also limit or

closely monitor flow, which is not as uniformly important in the NPDES program. As a practical matter, industrial users which anticipate changes to their facilities or production processes can benefit from keeping the POTW well informed about the nature of their discharges. Whether or not a user complies with the changed discharge notification requirement, it remains subject to liability for violating the general or specific prohibitions in § 403.5. However, it may be able to establish an affirmative defense based on compliance with an applicable local limit established in accordance with § 403.5(c)(1). (See, 52 FR 1586, January 14, 1987, for a thorough discussion of this affirmative defense and one based on "unchanged discharge.") Because only POTWs can establish local limits which serve as the basis for the affirmative defense, the industrial user must work with the POTW to obtain these limits and supply adequate information, including changes in discharge activities, for the POTW to develop and maintain technically sound limits.

d. *Today's rule.* EPA is promulgating the final rule as proposed, except to clarify that prompt notification shall be made "in advance" of a changed discharge.

E. Miscellaneous

1. New Source Criteria [40 CFR 403.3(k)]

a. *Existing rule.* "New source" is defined for the purpose of the pretreatment program at § 403.3(k) of the General Pretreatment Regulations. The regulations, however, do not address the basis for determining whether construction creates a new source at a site—thus making the industrial user subject to pretreatment standards for new sources—or merely modifies an existing source. The NPDES regulations (§ 122.29(b)) contain specific criteria for new source determinations for direct dischargers. This provision was revised on September 26, 1984 (49 FR 37998). As stipulated in § 122.29(b), construction, activities could result in a "new source" if (1) it is construction of a source at a new or "greenfield" site; (2) it is construction at a site of an existing source which totally replaces the process or production equipment causing the discharge at an existing source; or (3) it creates not only a new "building, structure, facility, or installation," but it is "substantially independent" of an existing source at the same site. The new source determination criteria at 40 CFR 122.29(b) also include factors to be

considered in applying the "substantial independence" test, and provide a clarification of when construction is deemed to commence.

b. *Proposed change.* It is equally important that Approval and Control Authorities, indirect dischargers, and the public be able to determine whether construction at the site of an indirect discharger's existing facility would result in a new source or simply a modification of an existing source. Like direct dischargers, indirect dischargers that are new sources often must meet more stringent standards than existing sources. Therefore, EPA proposed to add new source determination criteria identical to those found in the NPDES regulations to the pretreatment definition of "new source."

As in the NPDES regulations, the proposed changes set out three criteria. Construction by an industrial user would be classified as a new source if: (1) The construction is carried out at a site at which no other source is located, (2) the construction totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or (3) the production or wastewater generating processes of the constructed facility are substantially independent of an existing source at the same site. Any construction at the site of an existing facility that does not meet the above criteria will not result in a new source.

The first two criteria deal with situations where it is obviously appropriate to impose the generally more stringent new source standards. The third criterion, the "substantial independence" test is based on the notion that in those situations where there is new construction but less than total replacement at an existing facility, the classification decision should be based on the degree to which the constructed facility functions independently of the existing source. The proposed substantial independence test also set forth two factors that should be considered in making the determination of whether construction at an existing facility results in processes that are substantially independent and therefore qualify as a new source: (1) The extent to which the new facility is integrated with the existing plant; and (2) the extent to which the new facility is engaged in the same general type of activity as the existing source.

The proposal, like the parallel NPDES provision, also stated that construction is deemed to commence when the following are begun as part of a continuous on-site construction program: (1) Installation or assembly of

facilities or equipment, or (2) significant site preparation work necessary for such installation or assembly. Construction is also deemed to commence when the owner or operator of the facility has entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. The proposal also clarifies that options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute such a contractual obligation.

c. *Response to comments.* Fifteen commenters responding to this proposed change agreed with the Agency's intent in making the change. These commenters agreed with the Agency that the change was necessary to clarify the criteria used in determining whether an indirect discharger is a new source. Nine of the fifteen commenters fully agreed with the proposed change. The remainder agreed with the intent of the change, but suggested some clarification or examples were needed.

Several commenters suggested that the term "totally replaces" in proposed § 403.3(k)(1)(ii) be changed to "substantial change not independent of an existing source." Furthermore, these three commenters suggested defining "substantial change not independent of an existing source" as "a change in the process operation that results in a significant change in the volume or nature of the wastewater so that existing methods of control and pretreatment applied needs to be modified or upgraded." These commenters suggested these changes so that an indirect discharger could not change over all the equipment in a building, except for one piece, thereby remaining an existing source.

The Agency does not agree with these commenters' suggested changes. As noted in the preamble to the September 26, 1984, NPDES regulations package, "EPA proposed that, in the situations where there was new construction but less than total replacement at existing facilities, the (new source) classification decision should be based on the degree to which the constructed facility functions independently of the existing source." (49 FR 38043) This same substantial independence test should be used for indirect dischargers that do not totally replace an existing facility. This situation is covered by proposed § 403.3(k)(1)(iii). As noted in the September 26, 1984 preamble, "(T)he substantial independence test was aimed at ascertaining whether an existing source which undertakes major

construction that legitimately provides it with the opportunity to install the best and most efficient production process and wastewater treatment technologies should be required to meet new source performance standards at that facility." (49 FR 38403) Therefore, the change to § 403.3(k)(1)(ii) suggested by these commenters would be redundant, since the situation is already covered by § 403.3(k)(1)(iii).

One Control Authority suggested that "totally replaces" should be changed to "substantially replaces". This commenter also suggested that the term "substantially independent process" be clarified. As noted above, changing "totally replaces" to "substantially replaces" would cause redundant provisions in the regulations. However, clarification of the term "substantially independent process" is appropriate. The proposed change to the General Pretreatment Regulations contained the language describing the two factors used in determining whether new construction is substantially independent of an existing facility, § 403.3(k)(1)(iii) (51 FR 21444, 21473). However, since these factors were previously described in greater detail in response to the same issue, the Agency reproduces that discussion, as set forth in the September 26, 1984, NPDES regulations (49 FR 37998, 38043-38044):

The first factor is the degree of integration of a new process with existing processes. Under the first factor, if the new facility is fully integrated into the overall existing plan, the facility will not be a new source. For example, a plant may decide to improve the quality of a product by installing a new purification step into its process, such as a new filter or distillation column. Such a minor change would be integral to existing operations and would not require the facility to be as a new source. However, on the other extreme, if the only connection between the new and old facility is that they are supplied utilities such as steam, electricity, or cooling water from the same source or that their wastewater effluents are treated in the same [onsite] treatment plant, then the new facility will be a new source.

Four commenters [on the NPDES proposed regulations] argued that if a new process or plan used existing treatment equipment, for that reason alone it should not be considered a new source. EPA disagrees with these comments [on the NPDES regulations]. The legislative history of the CWA indicates that new source requirements were intended to apply where new construction allows flexibility to incorporate new pollution control technology. The fact that a facility can be constructed to utilize an existing waste treatment plant does not address the issue of whether new technology could have been installed. To allow the use of an existing treatment system, by itself, to preclude the application of new source

requirements would frustrate clear statutory intent.

The second clarifying factor that EPA has added is the extent to which the construction results in facilities or processes that are engaged in the same general type of activity as the existing source. Under this second factor, if the proposed facility is engaged in a sufficiently similar type of activity as the existing source, it will not be treated as a new source. For example, if a plant begins to produce a new product, e.g., nylon synthetic fiber, which is very similar to the product currently being produced by the plant, e.g., polyester synthetic fiber, using equipment that is essentially the same as the existing production equipment, this would likely be considered an existing source. However, if a plant producing a final product, e.g., polyester synthetic fiber, adds new equipment to produce the raw materials for that product, e.g., terephthalic acid or ethylene glycol, the proposed structure would likely constitute a new source. Of course to the extent the construction results in facilities engaged in the same type of activity because it essentially replicates, without replacing, the existing source, the new construction would result in a new source.

Two other commenters suggested that EPA should further clarify the term "substantially independent" by including several examples. The first commenter questioned whether "substantial independence" was determined by the physical location of a new facility or product line within a facility, the function of a new process, or the route the wastewater takes to get to the sewer. This commenter provided the example of a job shop electroplater that adds a new anodizing line to its facility. The commenter questioned whether the new line would be a new source if no anodizing line existed there previously, and also questioned the status of the new line if previously an anodizing line was in operation. In determining whether a new facility is a new source, the three factors (physical location, function, and wastewater flow route) should be considered. Furthermore, the examples given in the September 26, 1984, NPDES rulemaking should also be considered in making this determination. The Agency cannot respond to the two specific situations above without further information regarding the facility. In determining whether a facility is a new source, the totality of the situation needs to be addressed.

Finally, one local Control Authority requested a clarification of the status (new source or existing source) of a facility that moves existing equipment into a new building or into an existing building that did not previously have an industrial discharge to the sewer. Under today's rule, discharges from such

facilities would be new sources if the other requirements regarding construction of the source after proposal of new source standards were met.

d. *Today's rule.* EPA is promulgating this change as proposed.

E.2. New Source Compliance Deadline [40 CFR 403.6(b)]

a. *Existing rule.* The current regulations state that compliance with categorical pretreatment standards for new sources will be required "upon promulgation." (40 CFR 403.6(b).) However, new sources generally will commence discharge after promulgation of a categorical standard applicable to them. For these industrial users, compliance "upon promulgation" is meaningless. Furthermore, requiring immediate compliance by new sources is inconsistent with the NPDES regulations, which require compliance by direct dischargers that are new sources "within the shortest feasible time (not to exceed 90 days)." (40 CFR 122.29(d)(4).) The NPDES regulations also require directly discharging new sources to "install and have in operating condition, and [to] start-up all pollution control equipment * * * before beginning to discharge." *Id.*

b. *Proposed change.* EPA proposed to insert in § 403.6(b) language identical to that in 40 CFR 122.29(d)(4) with respect to the deadline for compliance by new sources. Under that proposal, new source indirect dischargers, like new source direct dischargers, would be required to install and start-up any necessary pollution control equipment before beginning to discharge. These sources would then be required to achieve compliance with applicable categorical standards within the shortest feasible time, not to exceed 90 days, after commencement of discharge. The proposed regulatory changes would ensure that indirect dischargers that are new sources have a meaningful compliance deadline consistent with that for direct dischargers.

c. *Response to comments.* All eleven commenters agreed with this proposed change. Commenters stated that the 90-day period was feasible, logical, realistic, and desirable as being consistent with the requirements for direct dischargers. However, one commenter agreed with the intent of the change, but commented that, from the standpoint of POTWs and environmental health, 90 days appeared to be far too long. This commenter suggested that 10 days would be more reasonable, but only if no significant interference or pass through problems were likely to occur from the noncompliant discharge during that time

period. Today's regulation would not deter a Control Authority from requiring a shorter "grace-period" for a new source to be in compliance with the standards. A POTW that may experience pass through or interference due to the start-up of a new source could certainly require compliance upon start-up.

A Control Authority agreed with the need to allow a certain start-up period before a new source must be in compliance with the categorical limit. But this commenter stated that the local pretreatment program administrator, who is most familiar with the facts of the situation, should be allowed to determine the consequences of the non-compliance and decide on the appropriate enforcement action to be taken. This commenter suggested that such decisions could include lengthening or shortening the time period for compliance. The Agency does not agree with this commenter's suggestions. National consistency is needed on this issue to avoid "forum shopping" by new sources looking for a lenient Control Authority that will allow a longer start-up period. As noted above, this change was proposed to provide consistency between direct and indirect discharger regulations.

d. *Today's rule.* EPA is promulgating this regulation as proposed.

E.3. Net/Gross [40 CFR 403.15]

a. *Existing rule.* Section 403.15 allows industrial users to request that EPA adjust an applicable categorical pretreatment standard to reflect credit for pollutants in the intake water. This section was patterned after a similar provision in the NPDES regulations (40 CFR 122.45(f)). It differs from the NPDES provision by providing that only EPA may grant net credits, where the NPDES provision allows approved States to grant credits.

An industrial user may obtain a credit under § 403.15 if it demonstrates that: (1) Its intake water is drawn from the same body of water into which the discharge from its publicly owned treatment works is made, (2) the pollutants present in the intake water will not be entirely removed by the treatment system operated by the industrial user, (3) the pollutants in the intake water do not vary chemically or biologically from the pollutant limited by the applicable standards, and (4) the industrial user does not significantly increase concentrations of pollutants in the intake water, even if the total mass of pollutants remains the same. Net/gross credits are available only to the extent that pollutants are not removed by

intake and effluent treatment systems used by the industrial user.

b. *Proposed change.* EPA promulgated a revised net/gross provision for the NPDES program (§ 122.45(g)), on September 26, 1984 (49 FR 37998). The revised rule was designed to be a less complicated and more workable approach to the process of granting requests by direct dischargers for a limitation on a net basis. A full discussion of the considerations underlying EPA's amendment of the NPDES provision can be found at 49 FR 38025-38028 (September 26, 1984). These same considerations are equally applicable to the pretreatment program. EPA therefore proposed to amend the net/gross provision in the General Pretreatment Regulations to make it consistent with the revised NPDES provision.

The proposal provided that upon the request of an industrial user, an applicable categorical pretreatment standard would be adjusted to reflect credit for pollutants in the intake water. The user must demonstrate that the control system it proposes to use or is using to meet the categorical standard would, if properly installed and operated, meet the standard in the absence of pollutants in the intake water. The basic principle is that such a control system must be applied to the discharger's effluent, but that credit is available as necessary to meet applicable limitations after control system is applied. In addition, under the proposal, credit for generic pollutants (e.g., BOD, COD, TSS, oil and grease) would not be allowed unless the industrial user demonstrates that the constituents of the generic measure in its effluent are substantially similar to the constituents of the generic measure in the intake water, or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere. The purpose of this restriction is to prevent the discharge of wastes that are more toxic than intake water pollutants, but are controlled by a limitation that does not measure this difference in toxicity, such as an oil and grease limit (i.e., indicator pollutants).

Under the proposal, credit for intake pollutants would only be allowed to the extent necessary to meet the applicable categorical standard, up to a maximum value equal to the influent value. Also, the user must generally demonstrate that the intake water is drawn from the same body of water as that into which the POTW discharges. While an industrial user should not be held responsible for pollutants already existing in its water supply if the POTW

discharges into the same body of water from which the user takes its water, the same reasoning cannot support allowance of a credit where the POTW's discharge is into another body of water. The grant of a credit in the latter case would allow a discharger to transfer pollutants from one body of water to another, thus resulting in the addition of pollutants to particular receiving waters for the first time. However, the proposal allowed the Control Authority to waive this "same body of water" requirement if it finds that no environmental degradation will result. An example might be where intake waters are taken from a relatively clean tributary of a relatively dirty body of water and discharged by the POTW to the latter body, possibly adjacent to where the tributary itself flows into the large body.

The proposal also incorporated a PIRT recommendation that control Authorities be allowed to make net/gross determinations. The Task Force based its recommendation on several factors. First, PIRT pointed out that net/gross determinations for direct dischargers are routinely made by the NPDES permit issuing authority, which is the functional equivalent of the pretreatment Control Authority. Second, PIRT stated that net/gross determinations for indirect dischargers are an activity that can be delegated to POTWs and States implementing the pretreatment program, provided that EPA develops suitable guidance on making such determinations. Finally, PIRT noted that § 403.15 currently provided that net/gross determinations can only be made by the EPA "Enforcement Division Director," a position that no longer exists at the Regional level. (EPA issued a final rule in the Federal Register on June 4, 1986 (51 FR 20426) making technical amendments to the General Pretreatment Regulations, including changing all references to the "Enforcement Division Director" to read "Water Management Division Director" to correctly reflect the Agency's current organization.) EPA agreed with PIRT's recommendation and proposed to amend § 403.15 to allow net/gross determinations to be made by the Control Authority. The Agency proposed to provide appropriate guidance as needed.

c. *Response to comments.* Of the seven commenters responding to the proposed revision, only one fully agreed with the proposal. Three other commenters agreed with the intent of the proposed change, but provided suggestions on clarifying or strengthening the provision. Three other

commenters, two industrial associations and an industrial user, opposed the revision.

All three commenters opposed to the revision stated that EPA has no statutory authority to require a discharger to remove pollutants in its intake water. The Agency is not convinced that this proposed revision is contrary to the Clean Water Act. The clear intent of the Act was to reduce the discharge of pollutants into the nation's waters. Requiring a direct or indirect discharger to remove pollutants contained in the intake water is justified when the discharge occurs to a different body of water. The proposed revision would allow the net/gross credit if the effluent was discharged to the same body of water from which the intake was drawn.

Three commenters objected to the conditions under which a credit would be granted and suggested that the various conditions be deleted. EPA has not deleted any of the conditions necessary for achieving a credit allowance and, therefore, receiving a control mechanism calculated on a net basis. EPA considers these conditions as reasonable and necessary for achieving the goals of the Act. The limitations on the net/gross provisions in the final regulation grow out of the technical basis on which pretreatment standards are established. Generally, EPA has developed pretreatment standards on a gross, not a net, basis. The standards assume that a treatment technology will achieve a final effluent concentration that is independent of fluctuations in effluent concentration.

Several commenters objected to the requirement that restricts the availability of a net credit to those industrial users who discharge their effluent into a POTW that discharges into the same body of water from which the industrial users water supply was drawn. While a discharger should not be held liable for pollutants already existing in its water supply if the discharge is into the same body of water from which the supply was drawn, the same reasoning cannot support allowance of the credit where the discharge is into another body of water. The grant of a credit in the latter case would allow the industrial user to transfer pollutants from one water body to another, thus adding pollutants to a water body. An exception to this rule is where the POTW discharges to a tributary of the stream from which the supply was drawn. In such a case, the credit may be granted since the tributary will be considered to be the same body of water as the downstream lake or river

for the purposes of the same body or water requirement.

Three commenters objected to the requirement that generic pollutants in intake waters be identical in concentration and type with the generic pollutants in the discharge before a net credit could be allowed. These commenters argued that an onerous burden will be placed on the industrial user in making this demonstration. One commenter suggested that a generic pollutant credit should be granted unless there is some reason for the Control Authority to believe that the industrial user is generating the specific generic pollutant constituent. EPA disagrees. Generic pollutant parameters such as BOD, COD, total organic carbon, and total suspended solids (TSS) are broad measurements of a number of specific chemicals or materials. TSS, as measured at a supply water intake point, may consist mostly of river silt. After being used in an industrial process, however, the TSS as measured at the industrial user's sewer connection may include substantial quantities of metals or other materials with toxic characteristics. EPA considers it essential to avoid allowance of credit when the pollutants in the discharge water vary significantly in toxicity from the pollutants in the intake water. Dischargers should not be allowed an unrestricted right to add more toxic pollutants to their discharge waters.

Another commenter disfavoring the proposal suggested that the following language be inserted into the regulation: "The applicable effluent limitation and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis;" (40 CFR 122.45(g)(i)) so that the pretreatment and NPDES regulations would be consistent. The Agency agrees with this comment. The intent of this provision in the NPDES regulations is to allow a permit writer to issue an NPDES permit based on net discharge limits where an effluent guideline is written on a net basis. Although few, if any, pretreatment standards are written on a net basis, more may be developed in the future, and it is appropriate to place a contingency in the pretreatment regulations to cover that situation. Therefore, the Agency has included wording similar to § 122.45(g)(i) in today's regulation as § 403.15(e).

One commenter, although supporting the intent of the proposed change, stated that empowering the Control Authority with making decisions about the "same body of water" requirement and the "no environmental degradation" requirement was misplaced. This

commenter suggested that the NPDES permit issuance authority (i.e., EPA or the State) should be empowered to make these decisions, not the Control Authority. The commenter noted that the NPDES authority, not the Control Authority, regulates discharges to the environment from the POTW and should therefore be making the decision. EPA does not agree with this commenter's suggestion.

First, Control Authorities with approved pretreatment programs have primary responsibility for controlling discharges to their systems. Accordingly, these Control Authorities should have more input into whether industrial users discharging into their POTWs will be granted a net credit under § 403.15. Control Authorities are best positioned to know whether granting net credits in a particular case will cause problems at the POTW. For example, one of the criteria applicable to granting the net credit adjustment is that the adjustment shall be given only to the extent that intake water pollutants limited by the categorical standard are not removed by the pretreatment technology employed by the industrial user. (See, § 403.15(c).) Control Authority are especially qualified to determine what limit the treatment technology at the industrial user's facility will be able to meet. Control Authorities are also best qualified to judge whether such adjustments are likely to cause interference, pass-through, sludge contamination, or a violation of local limits. In addition, Control Authorities are always allowed to impose more stringent limits on industrial users than the Federal regulations would allow (unless otherwise provided under State law). (See § 403.4.) Where a Control Authority wants to impose more stringent limits than those resulting from approval of net credits, it should be able to prevent a less stringent credit from being granted. If the NPDES issuance authority was granting the credit, then the Control Authority might not be able to prevent the less stringent credit from being approved.

Furthermore, Control Authorities have the best information regarding industrial users' discharges, characteristics of the total inflow to the POTW, and treatment efficiencies and mechanics at the POTW, so that the Control Authorities can best decide when "no environmental degradation" will be caused by issuing net credits to industrial users. It should also be noted that Control Authorities have a strong interest in not violating their NPDES permits. The Agency expects that

Control Authorities will be somewhat conservative in evaluating and approving requests for net credits. Finally, the Control Authorities will not be operating in a vacuum. Control Authorities can easily request technical assistance from their Approval Authority.

Another commenter who favored this proposed revision noted that EPA should clarify that it is more important for Control Authorities to assure no environmental degradation will result from the granting of net credits, than that the same body of water requirement is met. The Agency does not entirely agree with this comment. When determining whether to grant a credit for pollutants in a facility's intake water, the first step is to determine whether the same body of water from which the water supply is drawn is receiving the discharge from the POTW. If this condition is not met, then the Control Authority should consider whether the use classification of the water body changes between the industrial user's water supply intake and the discharge pipe of the POTW. If a water body has a higher value at the point of discharge, then a credit may not be allowed or only a partial credit may be granted. If the water bodies are different, then the Control Authority should analyze whether environmental degradation would occur if the credit is granted. This tiered approach does place an emphasis on the no environmental degradation analysis. However, it does not apply where the same body of water requirement is met.

A commenter in favor of this proposed revision had several additional comments on the proposal. The first comment concerned the deadline for applying for a credit for pollutants in the intake water. This commenter agreed with the PIRT recommendation that "timely application" for a credit is desired. However, this commenter noted that EPA had removed the 60-day notification deadline and had not replaced this provision with any definition of "timely" in the proposal.

This provision was deleted from the pretreatment regulations (51 FR 20426, at 20428; June 4, 1986), just prior to the proposal of today's regulations. The June, 1986 change was a technical correction deleting the 60-day deadline requirement from the regulations, but the original reasoning for doing this was contained in the January 28, 1981 (46 FR 9404) final General Pretreatment Regulations. In that regulations package the Agency deleted the 60-day deadline based on several commenters' Statements. ("In addition, several

commenters objected to the 60-day deadline for requesting a net/gross credit, noting that the Consolidated Permit (NPDES) regulations do not impose a similar constraint. These commenters pointed out that in many cases treatment technology would need to be installed before a user could satisfy the demonstrations needed to receive a credit. EPA agrees with this comment and accordingly has deleted the time limitation on applying for a net/gross credit." However, the specific deletion was not written into the regulatory language at 46 FR 9457. Therefore, the June 1986 technical corrections package deleted the requirement.

The Agency does agree with this commenter that timely applications are necessary. However, the term "timely" implies that a date will be chosen from which the time period will run. A strict time period is not needed. Rather, a reasonable length of time between when the industrial user knows that pollutants in its intake water are not being treated by the pretreatment system at the facility and when the user must request a net credit. Control Authorities will have the discretion to deny net credit requests that are filed long after the industrial facility learned of the problem.

The commenter also stated that certain provisions previously contained in 40 CFR 403.15(a) (3)-(4), and (c) should be retained. Specifically, these provisions require: no chemical or biological variation between the pollutants in the intake water and the pollutants limited by the categorical standard; no significant increase in the concentrations in the intake water; and notification of enforcement personnel if any significant change in the quantity of the pollutants in the intake water or the level of treatment occurs. As noted in the preamble to the proposal and today's regulation, the Agency has decided to rewrite this entire provision to make it "less complicated and more workable." Furthermore, the NPDES and pretreatment regulations should be more consistent, and the proposed changes achieve this intent. The provisions suggested by this commenter were contained in the NPDES regulations. The Agency proposed to delete the requirements from the NPDES regulations on November 18, 1982 (47 FR 52072, at 52090). A discussion of why these requirements were to be deleted appears at 47 FR 52080. These requirements were deleted from the NPDES regulations on September 26, 1984 (49 FR 37998, at 38050). The decision to delete the requirements was

further explained in the Response to comments for that regulation (49 FR 38025-28). The Agency still agrees with the reasoning of that decision, and does not believe that the pretreatment regulations should differ from the NPDES provisions. Therefore, the suggested provisions have not been included in today's regulation.

d. *Today's rule.* EPA is promulgating this rule as proposed, with the following additions as noted above: (1) Add a reference to paragraph (c) in paragraph (a) as follows " * * * if the requirements of paragraphs (b) and (c) are met.", and (2) a new paragraph (c) "The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis."

E.4. Upset Provision [40 CFR 403.16]

a. *Existing rule.* Existing § 403.16 provides an affirmative defense in an enforcement action if the industrial user shows that noncompliance with a categorical pretreatment standard was due to factors beyond the reasonable control of the discharger. This provision in the General Pretreatment Regulations is patterned after that found in the NPDES regulation at 40 CFR 122.41(n) (49 FR 37998, at 38049, September 26, 1984).

b. *Proposed change.* EPA revised the upset provision for direct dischargers on September 26, 1984 (49 FR 37998). The Agency proposed to revise § 403.16 of the pretreatment regulations to clarify the showing necessary to prove that an upset has occurred consistent with the 1984 revisions to the NPDES rule. The existing rule requires a discharger to prove that an upset occurred and that the "Industrial User can identify the specific cause(s) of the upset * * *". In some cases, overly literal application of this requirement would require a discharger to produce a level of proof that is not scientifically possible to obtain. The proposed rule deletes the word "specific" from § 403.16(c)(1) to clarify that the regulation does not require investigation to an impossible degree of certainty.

c. *Response to comments.* EPA received nine comments on the proposed change to the upset defense from industry, POTWs, and an environmental group. Most commenters supported the proposed rule for the reasons stated by EPA in the preamble and discussed below. One POTW commenter, however, opposed making the upset defense available because industrial users should be liable for any damage they cause to the sewers or treatment systems and because the defense would discourage users from

providing dependable pretreatment systems. Some industry commenters, on the other hand, not only supported the proposed change, but also argued that the availability of the upset should be broadened to include violations of local limits if the user can demonstrate that the prohibited discharge standards (§ 403.5) have not been violated. Finally, one commenter who supported the proposed change stated that the regulatory language did not fully convey the intent of the change as explained in the preamble discussion about investigating upsets.

EPA disagrees that the purpose or effect of the upset defense is to discourage industrial users from providing dependable pretreatment systems. By definition, an upset is unintentional, only occurs in exceptional circumstances, and is due to factors beyond the reasonable control of the industrial user. It does not include treatment process disruptions resulting from "operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation." 40 CFR 403.16(a). Rather than encourage unreliable pretreatment systems, the upset provision merely recognizes that the technology upon which the national categorical pretreatment standards are based may not function as intended 100 percent of the time, regardless of the actions taken by the industrial user. Furthermore, EPA does not intend the upset defense to be available to industrial users at the expense of POTWs. As discussed more fully below, the upset defense can only excuse violations of the categorical pretreatment standards. It does not provide a defense in any other actions that may be brought against an industrial user, such as a suit for damages to the POTW's system caused by the industrial user or an action to enforce violations of local limits. In addition, under section 510 of the CWA, a POTW (or a State) may decide to impose more stringent requirements than required by federal law by disallowing the upset defense even for violations of the categorical pretreatment standards (assuming the Control Authority has authority under State or local law).

Although the upset defense is justified for violations of the categorical pretreatment standards, it does not follow that the defense should also be allowed for violations of local limits. The commenters who supported broadening the defense generally argued that industrial users should not be held liable whenever violations are

unavoidable. Specifically they assert that: (1) Upsets which result in local limits violations are just as inevitable due to control technology failures (and other factors such as change in weather or wastewater characteristics) as upsets which result in violations of national categorical pretreatment standards; (2) the proof necessary to establish an upset defense in the case of local limits violations (including proof that the prohibited discharge standards have not been violated) is no more difficult than the proof required to establish the defense in the case of national categorical pretreatment standards; and (3) an upset defense for local limits violations must be codified because industrial users cannot rely on prosecutorial discretion to escape liability for unavoidable violations in the case of citizen suits. These arguments are similar to those advanced by industry, in previous rulemakings and litigation, in support of extending the upset defense for NPDES permittees beyond violations of technology-based effluent limitations to include violations of water-quality based limits.

At the outset, EPA notes that it proposed to change only one part of the upset regulation for the narrow purpose of making it consistent with a change made to the NPDES upset regulation. Neither the proposed rule nor the accompanying preamble discussion contemplated any other change. Therefore, the Agency concludes that it would be inappropriate to substantively revise the scope of the upset defense in this rulemaking. However, even assuming that the Agency could properly consider extending the upset defense to cover violations of local limits, it would reject the commenters' arguments for some of the same reasons it rejected similar arguments in the context of the NPDES upset regulation.

The rationale for providing an upset defense for violations of the national categorical standards does not apply to violations of local limits. As discussed more thoroughly in previous rulemakings, the upset defense was designed, in part, in response to court rulings which found that to address situations where the equipment underlying technology-based limitations fails for reasons beyond the control of the operator, EPA must allow for upsets in applying these technology based standards. See discussions at 49 FR 37998, 38038 (September 14, 1984) and 44 FR 32863 (June 7, 1979). Unlike the categorical pretreatment standards, local limits developed pursuant to § 403.5(c) are not designed to reflect what certain technologies can achieve.

Instead, they are designed to prevent a specific result, i.e., violations of the general prohibitions against pass through and interference in § 403.5(a) and the specific prohibitions in § 403.5(b). Prevention of pass through and interference is the ultimate goal of the entire pretreatment program. Although the pollution control equipment installed to meet local limits may also be subject to inherent failures beyond the industrial user's control, the legal basis for requiring the upset defense—accommodating the rare, but inevitable, technological failures which were assumed in establishing technology-based requirements—is not applicable in the case of local limits designed to prevent violations of the general and specific prohibitions. Therefore, EPA has concluded that the CWA does not require that an upset be provided for violations of local limits. Because compliance with local limits is the ultimate factor in achieving the goals of the national pretreatment program, excusing violations of local limits is unwarranted as a matter of policy. This decision is consistent with the Agency's recent action to establish limited affirmative defenses for violations of the general and specific prohibitions only when applicable local limits have not been violated. (See, 52 FR 1586 (January 14, 1986).)

To protect the integrity of local limits and their role in achieving pretreatment goals, EPA also deems it inappropriate to include local limit violations in the upset defense even where the industrial user can prove that the general and specific prohibitions have not been violated. Therefore, the Agency concludes that it is unnecessary to address the commenters' arguments concerning the practicability of proving compliance with national prohibited discharge standards.

EPA's decision not to extend the scope of the upset defense does not preclude the Agency from exercising its enforcement discretion when determining whether to bring an action pursuant to § 403.5(e) for violations of local limits or in evaluating the appropriate enforcement response when it decides to take action. EPA also anticipates that courts will consider an industrial user's good faith efforts to follow upset defense requirements (e.g., prompt notice to the POTW and efforts to mitigate damage caused by the upset and to identify and remedy the cause), as well as other relevant factors, when fashioning the appropriate relief in any citizen suit which may be brought under section 505 of the CWA to enforce violations of local limits. Commenters

who argued that industrial users should not have to rely on the Agency's enforcement discretion to avoid liability assume that they are legally entitled to an upset defense for local limits.

In response to the final comment noted above, EPA disagrees that the proposed rule fails to convey the intent of the preamble discussion about the investigation of upsets. The preamble explained that under the proposed rule an industrial user would still be required to undertake a thorough investigation of the cause of the upset (and not just show that it has followed normal operating procedures), but that it would not have to pinpoint with absolute certainty the specific cause. The preamble further clarified that proof of the cause of an upset could be through circumstantial, as well as direct, evidence. 51 FR 21475, 21476 (June 12, 1986). The commenter does not indicate how the proposed rule could be revised to more fully convey EPA's intent (e.g., by codifying specific investigation duties the industrial user would be required to undertake or by codifying the types of evidence that would be acceptable as proof of cause).

The preamble discussion about investigating upsets and establishing the defense reflects typical rules of evidence that would apply in a proceeding to determine whether the affirmative defense should be allowed and explains how they might apply to the upset defense in particular. Under § 403.16(d), the industrial user has the burden of demonstrating that each element of the defense exists, including the demonstration of the cause of the upset. (The other elements which the user must demonstrate are listed in § 403.16(c).) This burden clearly requires that the user come forward with evidence of cause. A user would have to undertake a thorough investigation of how the upset occurred in order to discover and adduce the necessary evidence to meet this burden. However, the specific type of investigation techniques and proof necessary to establish the cause of the upset may not be the same in all situations. Accordingly, EPA has determined that it would be inappropriate to further specify in the regulation how the user must demonstrate cause.

This makes the upset provision in the general pretreatment regulations consistent with the upset provision in the NPDES regulations and thus eliminates any inequity that may have existed between the treatment of direct and indirect discharges in the requirements for establishing an upset

defense to violations of national technology-based discharge limitations.

As explained in the preamble to the proposed rule, the purpose of deleting the word "specific" from § 403.16(c)(1) is to clarify that the regulation does not require a discharger to produce a level of proof that is not scientifically possible to obtain or to require investigation and demonstration of the cause of an upset to an impossible degree of certainty. For example, there may be cases where biological activity is disrupted in a treatment system, where no change in raw waste characteristics could be identified, and where a thorough investigation by the user could not identify the precise cause of the violation. Such evidence could be adduced to show the "cause" required by today's regulation, even though the precise cause eluded detection. In these cases, it is sufficient that the available evidence vindicates the industrial user although it does not specifically identify the responsible party or event.

The Agency reiterates that a demonstration of the cause of an upset can be based on evidence that would be acceptable as proof of a fact in court. Thus, demonstration of cause can be based upon circumstantial, as well as direct, evidence. In many cases, circumstantial evidence may be all that is available. However, under the final rule, it is not enough simply to show that normal operating procedures were followed at the time the categorical standards were exceeded. By implication, the final rule requires at least a thorough investigation of the causes of the upset. Further, subsequent claims of upset would require a stronger showing where previous violations had occurred and no effort, or insufficient effort, was made to identify and remedy the cause or causes.

Finally, EPA would like to clarify that the upset defense is available only for factors beyond the reasonable control of the industrial user. In arguing for extension of the upset defense to cover local limit violations, one commenter listed changes in wastewater characteristics as an instance in which a violation would be unavoidable and therefore should be excused. EPA disagrees that a change in wastewater characteristic is beyond the reasonable control of the industrial user. Indeed, the industrial user is in the best, and perhaps only, position to control the characteristics of the wastewater entering its pretreatment facilities. Therefore, EPA would not consider an upset resulting from changes in wastewater characteristics eligible for the upset defense.

d. *Today's rule.* Today's final rule is the same as the proposed rule. As proposed, the word "specific" is deleted from § 403.16(c)(1) so that in establishing an upset defense, an industrial user must identify the cause of the upset, but no longer needs to identify the specific cause of the upset as required by the previous rule. No other aspects are changed by this rulemaking.

E.5. Bypass Provision [40 CFR 403.17]

a. *Existing rule.* For direct discharges, the NPDES regulations prohibit bypass, which is defined as the intentional diversion of waste streams from any portion of a discharger's treatment facility. This provision thus requires NPDES permittees to operate their entire treatment facility at all times. There are, however, exceptions to the strict prohibition on bypass even where effluent limitations may be violated as a result. Bypass may be excused if the bypass was unavoidable to prevent loss of life, personal injury or severe property damage, and where there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. The "no feasible alternatives" criterion is not satisfied if, in the exercise of reasonable engineering judgment, the permittee should have installed adequate back-up equipment as preventative maintenance or to prevent a bypass that occurred during normal periods of equipment downtime. The prohibition of bypass in the NPDES regulations applies even where the permittee does not violate permit limitations during the bypass. However, permittees may bypass if they do not exceed effluent limitations and if the bypass was for essential maintenance to ensure efficient facility operations.

The NPDES bypass provision serves two basic purposes. First, it excuses certain unavoidable or justifiable violations of permit effluent limitations, provided the permittee can meet the bypass criteria. Second, it requires that permittees operate pollution control equipment at all times, thus obtaining maximum pollutant reductions consistent with technology-based requirements mandated by section 301 of the CWA and furthering the Act's goal of eliminating the discharge of all pollutants. Section 101(a)(1) of the Act. Without such a provision, dischargers could avoid appropriate technology-based control requirements.

b. *Proposed change.* EPA proposed to add a bypass provision to the General Pretreatment Regulations similar to that in the NPDES program. The purposes

served by the NPDES bypass provision are equally important in the pretreatment context, and, therefore, the prohibition against bypass should also apply to industrial users discharging to POTWs. Like the NPDES provision, the proposal would require industrial users to operate their treatment systems at all times. It would also excuse bypasses under the same circumstances as does the NPDES bypass regulation.

Consistent with the NPDES regulations, the proposed regulation would also impose certain notice requirements when a bypass by an industrial user results in the violation of applicable pretreatment standards or requirements (including local limits established in accordance with § 403.5(c)). If the industrial user knows in advance of the need for a bypass, it must give prior notice to the Control Authority, if possible at least ten days before the date on which the bypass is to occur. If the bypass is not anticipated, the industrial user must notify the Control Authority orally within 24 hours of becoming aware of the bypass. This 24-hour notice must be followed within five days by a written description of the bypass, its cause, its duration (or, if it has not been corrected, how long it is expected to continue), and what has been done to rectify the problem. The proposed rule would allow the Control Authority to waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

c. *Response to comments.* Several commenters supported EPA's proposed rule without reservation for the reasons stated in the preamble. Nearly all commenters expressed support for some aspects of the proposal, but had objections to various other parts. In most cases, these objections paralleled objections to the NPDES bypass provision stated in previous rulemakings and pending litigation. Only one commenter, a POTW, objected entirely to adding a bypass provision to the General Pretreatment Regulations.

The commenter who argued that EPA should not promulgate the proposed rule stated that industrial users should not be given any incentive to bypass treatment systems and should be liable without exception for any damage they cause at the POTW. Instead, the incentive should be to require them to operate dependable pretreatment systems (e.g., use of dual equipment, "slop" tanks) to avoid the need for bypass. Another POTW stated that there is "no rationale" for allowing bypass for maintenance.

Clearly, EPA's intent in proposing the bypass provision was not to discourage

dependable pretreatment systems. On the contrary, the rule prohibits bypass except under very limited circumstances and in no case would excuse bypass where the user failed to properly operate and maintain its treatment system. Even when a violation of pretreatment standards would not result, the rule prohibits bypass unless the bypass was for essential maintenance to assure efficient operation. "Maintenance" in this instance does not refer to maintenance of the user's general facility, but means maintenance essential to the efficient operation of the user's pretreatment system. Moreover, the maintenance must be essential, of an emergency nature, not routine or based on economic considerations alone. Generally, this means repairs and maintenance that cannot wait until the production process is not in operation. For example, if the seal on a valve malfunctions or a pipe bursts during production hours at an industrial facility, and the facility operator bypasses that particular unit process in the pretreatment system in order to perform corrective maintenance, such maintenance would be considered essential. (A more complete discussion of "essential maintenance" appears at 49 FR 38037, September 26, 1984.) Recognizing the need for essential maintenance should encourage, not discourage, dependable pretreatment systems.

The rule does not excuse bypass in certain situations where pretreatment standards are violated. Significantly, bypass would not be excused if there were feasible alternatives to the bypass such as the use of auxiliary equipment. The rule specifically states that the "no feasible alternatives" test is not met if "adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance." (§ 403.17(1)(ii).) Thus, to the extent reasonable engineering judgment would dictate use of dual equipment or "stop" tanks so that bypass would not occur during routine maintenance, EPA agrees with the commenter that these back-up facilities should be required. However, EPA cannot agree that the rule should require an industrial user to have certain back-up equipment in all cases.

In contrast to these comments, another POTW suggested that back-up equipment should not be required where the system has already been built and adding back-up equipment is not feasible, for example where the user

does not have enough land to install the additional equipment. In lieu of back-up equipment, users should be required to keep an adequate spare parts inventory on hand. As noted above, the regulation does not mandate back-up equipment in all cases, but includes a flexible requirement based on "reasonable engineering judgment." Thus, whether installation of back-up equipment or keeping a spare parts inventory is sufficient for purposes of the no feasible alternative test depends on whether, in the exercise of reasonable engineering judgment, one or the other should have been present to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

Because of the flexibility built into the bypass provision, EPA also does not agree with the commenter who suggested that EPA should allow bypass in all cases of floods. This commenter reasoned that although floods may jeopardize or damage operation of the system, they don't often cause "severe property damage." The commenter expressed particular concern about hurricane/monsoon rains that exceed the industrial users capacity to contain and treat storm water runoff. In such cases, the commenter argued, bypass during floods could reduce or prevent environmental harm by eliminating the "flushing out" of contaminants in the treatment system.

EPA is aware that flood situations may present users with a difficult dilemma concerning whether or not to bypass. The underlying premise of the CWA, however, is that undertreated or untreated wastewater should not be discharged. Only very exceptional circumstances should justify the intentional diversion of a wastestream from required treatment processes. In effect, the "severe property damage" test of the bypass provision reflects the Agency's determination of when the harm of not bypassing (e.g., when it avoids causing the treatment system from becoming inoperable or prevents substantial and permanent damage to natural resources) exceeds the benefits of requiring treatment in any event and thus justifies excusing a bypass. Therefore, the Agency has already taken into account the factors mentioned by the commenter (damage to the treatment system, environmental harm) in a manner consistent with the CWA.

In response to the comment that the regulation should make an industrial user liable any time it causes damage at the POTW, EPA notes that the bypass provision merely allows an industrial user to avoid an enforcement action for

violations of pretreatment standards. It does not provide a defense to other action a Control Authority may have against an industrial user such as an action for damages. Also, as with the upset defense, section 510 of the CWA allows a POTW (or a State) to establish more stringent requirements, such as prohibiting bypass or requiring back-up equipment in all cases.

The remaining comments related to the prohibition against bypass even when violations of pretreatment standards would not result (the "constant treatment" requirement). One commenter suggested that the Agency reword the regulation because it seemed to require the use of pretreatment equipment even if the quality of the discharge would not be improved as a result. Another commenter stated that promulgating this provision in the pretreatment regulations would violate the NPDES settlement agreement between EPA and industry. Others asserted that the "constant treatment" requirement violates the CWA, listing three basic reasons: (1) It dictates how to comply, rather than what standard to comply with; (2) the rationale used by EPA to support the requirement (i.e., ensuring appropriate control of pollutants that are not specifically regulated) constitutes de facto regulation and circumvents the standard setting procedures contained in the Act; and (3) by failing to compare the costs of the requirement with the environmental benefits of reducing "unregulated" pollutants, the Agency acted arbitrarily.

The Agency disagrees with all these comments. The settlement agreement between EPA and industry groups required EPA to propose certain revisions to the NPDES bypass provision, but did not, and could not, require EPA to agree to promulgate those proposed revisions in the final rule. EPA's decision not to promulgate the proposed revisions resulted in a suit against EPA challenging the NPDES bypass provision. The challenge is based on the merits of the regulation and not because of any alleged breach of the settlement agreement. The Court of Appeals for the D.C. Circuit recently upheld the cited NPDES regulations on bypass (*NRDC v. EPA, et al.*, 26 ERC 1153, June 30, 1987). Therefore, this commenter's suggestions regarding the "constant treatment" requirement have not been incorporated into today's regulation. EPA's position continues to be that requiring users to operate the pretreatment facilities at all times even though bypassing these facilities would not result in violations of pretreatment standards does not violate the CWA.

and, in fact, furthers the goals of the CWA. The preamble to the September 26, 1984, NPDES rulemaking explained EPA's rationale for the "constant treatment" requirement:

EPA's effluent limitations guidelines and standards-setting process are predicted [sic] upon the efficient operation and maintenance of removal systems. A number of the effluent limitations guidelines and standards upon which NPDES permits are based do not contain specific limitations for all of the pollutants of concern for the given industry.

The data available to EPA show that effective control of these [unregulated] pollutants can be obtained by controlling the discharge of the pollutants regulated by the standard . . . to levels achievable by the model treatment technology upon which the effluent guideline limits are based.

If bypass of treatment equipment is allowed, there is no assurance that these unlimited pollutants will be controlled, even though those specifically limited still meet permit limitations.

(49 FR 38036-38037.)

Like the effluent guidelines in the NPDES program, the national categorical pretreatment standards do not necessarily regulate all pollutants of concern in a particular industry, but instead rely on the technology required to control the specifically regulated pollutants to also regulate other pollutants of concern, assuming proper operation and maintenance of the treatment facilities. For example, control of oil and grease by a pretreatment system will also serve to control some toxic components of a discharge and some portion of the BOD loading of that discharge. The bypass prohibition thus supplements the categorical standards and furthers the Act's goals of eliminating the discharge of pollutants.

Like the upset provision, the bypass regulation is a general requirement which, although it works in conjunction with the categorical pretreatment standards, is not itself an effluent standard. The CWA clearly authorizes the Administrator to promulgate regulations which are necessary to carry out the purposes of the Act (Section 301). EPA has not "circumvented" the standard setting procedures established by the Act in promulgating the bypass provision, because it was not limited to establishing categorical standards in developing regulations to implement the national pretreatment program. The Agency has determined that the bypass provision, which mandates full use of treatment facilities and encourages proper operation and maintenance of those facilities is a reasonable measure to ensure compliance with pretreatment standards.

Likewise, nothing in the Act requires the Agency to justify each of its program regulations with a cost benefit analysis as the commenters suggest. Of course, the Agency does not ignore these factors. In this case, however, because the bypass provision merely "piggybacks" existing requirements, it does not itself impose costs that have not already been taken into account in the development of categorical standards. In addition to capital costs, these costs include the costs of operating and maintaining pretreatment facilities. (See, for example, "Development Document for the Electroplating Category".) Moreover, the Agency decided to adopt the approach of controlling some pollutants of concern through controlling "indicator" pollutants in part to reduce compliance costs (e.g., sampling, monitoring, and reporting of each pollutant specifically limited by the standards) in response to industry concerns. On the other hand, the incidental removal of pollutants not specifically regulated clearly conforms to the environmental benefits envisioned by Congress of eventually eliminating the discharge of all pollutants.

The bypass provision does not dictate how users must comply because it does not dictate what pretreatment technology the user must install. Instead the bypass provision merely requires that the user operate the technology it has chosen. Although termed the "constant treatment" requirement, the bypass provision does not mean that the pretreatment facilities must operate twenty-four hours a day regardless of the activities at the user's facility. Instead, the user must operate the treatment system in a manner consistent with appropriate engineering practice. Thus, if the facility is designed to use scrubbers twice a day, the bypass regulation does not require the facility to run the scrubber 24 hours a day. Similarly, the bypass prohibition does not require operation of the treatment system if the facility is not operating and there are no wastewater discharges. Nor does it require operation of treatment systems 24-hours a day if wastes are collected and retained for eventual treatment and released in batch discharges. For users who must operate continuously, the bypass prohibition recognizes that bypass may be unavoidable and therefore allows bypass for essential maintenance that cannot be conducted during normal downtimes.

In sum, EPA has considered all of the comments objecting to a bypass prohibition when pretreatment standards would not be violated

because of the bypass. These comments mirror comments the Agency considered and rejected during consideration of the NPDES bypass regulation. Nothing in the comments convince the Agency that its decision should be different because of material differences between NPDES permittees and industrial users. As with the NPDES bypass provision, EPA has determined that a bypass provision in the General Pretreatment Regulations is necessary to ensure that users properly operate and maintain their treatment facilities and thus fulfill the purpose and assumptions underlying technology-based standards. This is consistent with Congressional intent and within its authority to promulgate regulations necessary to achieve the purposes of the Act.

d. *Today's rule.* For the reasons stated in the preamble and in the response to comments above, EPA is promulgating the bypass regulation as proposed.

III. Judicial Review of Provisions Not Amended

In the regulatory section of this notice, EPA has, for the sake of clarity, sometimes reprinted portions of regulatory text that have not been amended by today's proposal. Those portions of the June 26, 1978 regulations and the January 28, 1981 regulatory amendments that are not substantively amended in today's *Federal Register* were only subject to judicial review in those petitions for review that were filed within 90 days of the date of issuance of the June 26, 1978 regulations, and the January 28, 1981 amendments thereto, respectively.

IV. Technical Revisions

In addition to the substantive changes made by today's rulemaking, certain sections of the General Pretreatment Regulations must be revised in order to conform to today's changes. Thus, the reference to "contract(s)" is deleted from §§ 403.8(f)(1)(iii) and 403.9(b). The reference in new § 403.12(n) (*Provisions governing fraud and false statements*) to the reports required by old paragraphs (b), (d), (e), and (h) of that section has been changed to the reports required in new paragraphs (b), (d), (e), (h), and (i), and (k) of that section. Similarly, new § 403.12(o) has been revised to include as subject to the record-keeping requirements of that paragraph any reports required pursuant to new paragraph (h) of that section. In addition, the references in § 403.10(d) to § 403.12(h) have been revised to reflect the redesignation of that paragraph as § 403.12(k).

V. List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

VI. EPA Documents Cited in This Notice

The following EPA documents are referenced in the preamble section of this notice:

- Guidance Manual for POTW Pretreatment Program Development (1983)
 - Procedures Manual for Reviewing a POTW Pretreatment Program Submission (1983)
 - Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula (1985)
 - Pretreatment Implementation Review Task Force—Final Report to the Administrator (1985)
 - Pretreatment Compliance Monitoring and Enforcement Guidance (1986)
 - Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program (1987)
- Copies of these documents can be obtained by contacting Chuck Prorok, Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 426-7053.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments generally clarify the meaning of pretreatment requirements and do not impose significant new burdens on affected parties. They do not satisfy any of the criteria specified in section 1(b)—an effect on the economy of \$100M or more per year; a major increase in costs or prices for consumers or individual industries, agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or competition with foreign producers—of the Executive Order. These amendments will not produce a compliance cost of more than \$100M per year, will not cause a major increase in costs or prices for any segment of the affected population, and will not create any of the enumerated significant adverse effects. Therefore, this is not a major rulemaking. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VIII. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040-0009.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's amendments to the General Pretreatment Regulations clarify the meaning of several pretreatment requirements and do not impose any significant new burdens on affected parties. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

Dated: September 29, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is revised as follows:

**PART 403—GENERAL
PRETREATMENT REGULATIONS FOR
EXISTING AND NEW SOURCES**

1. The authority citation for Part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95-217), sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977.

2. Section 403.3 is amended by revising paragraph (k) to read as follows:

§ 403.3 Definitions.

(k)(1) The term "New Source" means any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, *provided that*:

(i) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (k)(1)(ii), or (k)(1)(iii) of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

3. Section 403.6 is amended by redesignating paragraph (c) as paragraph (c)(1), adding new paragraphs (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), and (c)(7), revising paragraphs (a)(2)(ii), (b), (d), and (e)(3), revising the definition of "F₀" in paragraphs (e)(1) (i) and (ii), and adding a new paragraph (e)(4) to read as follows:

§ 403.6 National Pretreatment Standards: Categorical Standards.

(a) * * *

(2) * * *

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(b) *Deadline for Compliance with Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c) * * *

(2) When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day of effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

(3) A Control Authority calculating equivalent mass-per-day limitations under paragraph (c)(2) of this section shall calculate such limitations by multiplying the limits in the Standard by the Industrial User's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the Industrial User's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(4) A Control Authority calculating equivalent concentration limitations under paragraph (c)(2) of this section shall calculate such limitations by dividing the mass limitations derived under paragraph (c)(3) of this section by the average daily flow rate of the Industrial User's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the Industrial User's actual long-term average flow rate, such as the average daily flow rate during the representative year.

(5) Equivalent limitations calculated in accordance with paragraphs (c)(3) and (c)(4) of this section shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this Part. Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(6) Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, limitations. Where such Standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(7) Any Industrial User operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

(d) *Dilution Prohibited as Substitute for Treatment.* Except where expressly authorized to do so by an applicable

Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority (as defined in § 403.12(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) * * *

(1) * * *

(i) * * *

F_D = the average daily flow (at least a 30-day average) from: (a) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a Categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 6 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D of this Part):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

* * *

(ii) * * *

F_D = the average daily flow (at least a 30-day average) from: (a) boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an Industrial

User's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the Control Authority, upon application of the Industrial User, may exercise its discretion to determine whether such stream(s) should be classified as diluted or unregulated. In its application to the Control Authority, the Industrial User must provide engineering, production, sampling and analysis and such other information so that the Control Authority can make its determination; or (b) sanitary wastestreams where such streams are not regulated by a categorical Pretreatment Standard; or (c) from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC v. Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D of this Part):

(1) The pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) The wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

(3) *Self-monitoring.* Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of § 403.12(g).

(4) *Choice of monitoring location.* Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the Industrial User may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable Pretreatment Standards. If the Industrial User chooses to monitor the segregated process wastestream, it shall apply the applicable categorical Pretreatment Standard. If the User chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The Industrial User may change monitoring points only after receiving approval from the Control Authority. The Control Authority shall ensure that any change in an Industrial User's monitoring point(s) will not allow the User to substitute dilution for adequate treatment to achieve compliance with applicable Standards.

4. Section 403.8 is amended by revising paragraphs (b), (f)(1)(iii), and

(f)(1)(vi)(A), and adding a new paragraph (f)(4) to read as follows:

§ 403.8 POTW pretreatment programs: Development by POTW.

(b) *Deadline for Program Approval.* A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTWs whose NPDES permits are modified under section 301(h) of the Act shall have a Pretreatment Program within three (3) years as provided for in 40 CFR Part 125, Subpart G. POTWs identified after July 1, 1983 as being required to develop a POTW Pretreatment Program under paragraph (a) of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the Approval Authority of such identification. The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and shall be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(f) * * *

(1) * * *

(iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements;

(vi)(A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injunctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by Industrial Users of Pretreatment Standards and Requirements. POTWs whose approved Pretreatment Programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with § 403.18 by November 16, 1989, unless the State would be required to enact or amend a statutory provision, in which case the POTW shall submit such a request by November 16, 1990.

(4) *Local limits.* The POTW shall develop local limits as required in § 403.5(c)(1), or demonstrate that they are not necessary.

5. Section 403.9 is amended by revising paragraphs (b)(1)(ii) and (2), and (e) to read as follows:

§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.

(b) * * *

(1) * * *

(ii) Identify the manner in which the POTW will implement the program requirements set forth in § 403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,

(2) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

(e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate, (d) of this section. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in § 403.11.

6. Section 403.10 is amended by revising the references in paragraphs (d)(1) and (3) to "§ 403.12(h)" to read "§ 403.12(fk)" and also by revising paragraph (g)(1)(iii) to read as follows:

§ 403.10 Development and submission of NPDES State pretreatment program.

(g) * * *

(1) * * *

(iii) States with approved Pretreatment Programs shall establish

Pretreatment regulations by November 16, 1989, unless the State would be required to enact or amend statutory provision, in which case, such regulations must be established by November 16, 1990.

7. Section 403.11 is amended by revising the introductory text of paragraph (b) to read as follows:

403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.

(b) *Public notice and opportunity for hearing.* Upon receipt of a Submission the Approval Authority shall commence its review. Within 20 work days after making a determination that a Submission meets the requirements of § 403.9(b) and, where removal allowance approval is sought, §§ 403.7(d) and 403.9(d), the Approval Authority shall:

8. Section 403.12 is amended by revising the introductory text of paragraph (b), paragraphs (b)(5)(iii), (b)(5)(iv), (d), (f), and (g); re-designating paragraphs (h) through (l) as paragraphs (k) through (o); revising newly designated paragraphs (l), (n) and (o)(3); and by adding new paragraphs (e)(3), (h), (i), and (j) to read as follows:

§ 403.12 Reporting requirements for POTWs and industrial users.

(b) *Reporting requirements for industrial users upon effective date of categorical pretreatment standard—baseline report.* Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under § 403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)–(7) of this section. Where reports containing this information already have been submitted to the Director or Regional Administrator in compliance with the requirement of 40 CFR 128.140(b) (1977), the Industrial User will not be required to submit this information again. At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall be required to submit to the Control Authority a

report which contains the information listed in paragraphs (b)(1)–(5) of this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs (b) (4) and (5) of this section:

(5) * * *
(iii) A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged.

(iv) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(d) *Report on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b) (4)–(6) of this section. For Industrial Users subject to equivalent mass or concentration limits established by the Control Authority in accordance with the procedures in § 403.6(c), this report shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

(e) * * *
(3) For Industrial Users subject to equivalent mass or concentration limits

established by the Control Authority in accordance with the procedures in § 403.6(c), the report required by paragraph (e)(1) shall contain a reasonable measure of the User's long term production rate. For all other Industrial Users subject to categorical Pretreatment Standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by paragraph (e)(1) shall include the User's actual average production rate for the reporting period.

(f) *Notice of potential problems, including slug loading.* All categorical and non-categorical Industrial Users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by § 403.5(b), by the Industrial User.

(g) *Monitoring and analysis to demonstrate continued compliance.* (1) The reports required in paragraphs (b), (d), and (e) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under §§ 403.12(b) (6) and 403.12(d). In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation, except the Industrial User is not required to resample if:

(i) The Control Authority performs sampling at the Industrial User at a frequency of at least once per month, or
(ii) The Control Authority performs sampling at the User between the time when the User performs its initial sampling and the time when the User receives the results of this sampling.

(3) The reports required in paragraph (e) of this section shall be based upon data obtained through appropriate

sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Control Authority shall require that frequency of monitoring necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(4) All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(h) of the Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Administrator. (See, §§ 136.4 and 136.5.) Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(5) If an Industrial User subject to the reporting requirement in paragraph (e) of this section monitors any pollutant more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(4) of this section, the results of this monitoring shall be included in the report.

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority shall require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards.

(i) *Annual POTW reports.* POTWs with approved Pretreatment Programs shall provide the Approval Authority with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the following:

(1) An updated list of the POTW's Industrial Users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which Industrial

Users are subject to categorical pretreatment Standards and specify which Standards are applicable to each Industrial User. The list shall indicate which Industrial Users are subject to local standards that are more stringent than the categorical Pretreatment Standards. The POTW shall also list the Industrial Users that are subject only to local Requirements.

(2) A summary of the status of Industrial User compliance over the reporting period;

(3) A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period; and

(4) Any other relevant information requested by the Approval Authority.

(j) *Notification of changed discharge.* All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge.

(l) *Signatory requirements for industrial user reports.* The reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in § 403.6(a)(2)(ii), and shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) By a general partner or proprietor if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.

(3) By a duly authorized representative of the individual designated in paragraph (l)(1) or (l)(2) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (l)(1) or (l)(2);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation

of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (l)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (l)(3) of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

(n) *Provisions governing fraud and false statements.* The reports required by paragraphs (b), (d), (e), (h), (i), and (k) of this section are subject to the provisions of 18 U.S.C. 1001 relating to fraud and false statements and the provisions of section 309(c)(2) of the Act governing false statements, representations or certifications in reports required under the Act.

(o) * * *

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), (e), and (h) of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

9. Section 403.15 is revised to read as follows:

§ 403.15 Net/Gross calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section.

(a) *Application.* Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements

of paragraphs (b) and (c) of this section are met.

(b) *Criteria.* (1) The Industrial User must demonstrate that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

(c) The applicable categorical pretreatment standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis.

10. Section 403.16 is amended by revising paragraph (c)(1) to read as follows:

§ 403.16 Upset provision.

(c) * * *

(1) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;

* * *

11. Part 403 of Title 40 of the Code of Federal Regulations is amended by adding a new § 403.17 to read as follows:

§ 403.17 Bypass.

(a) *Definitions.* (1) "Bypass" means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably

be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not violating applicable Pretreatment Standards or Requirements.* An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) *Notice.* (1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) *Prohibition of bypass.* (1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless;

(i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(iii) The Industrial User submitted notices as required under paragraph (c) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will

meet the three conditions listed in paragraph (d)(1) of this section.

12. Part 403 of Title 40 of the Code of Federal Regulations is amended by adding a new § 403.18 to read as follows:

§ 403.18 Modification of POTW Pretreatment Programs.

(a) *General.* Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's Submission, as approved under § 403.11.

(b) *Procedures.* POTW Pretreatment Program modifications shall be accomplished as follows:

(1) For substantial modifications, as defined in paragraph (c) of this section:

(i) The POTW shall submit to the Approval Authority a statement of the basis for the desired modification, a modified program description (*see*, § 403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(ii) The Approval Authority shall approve or disapprove the modification based on the requirements of § 403.8(f), following the procedures in § 403.11(b)-(f).

(iii) The modification shall be incorporated into the POTW's NPDES permit after approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

(iv) The modification shall become effective upon approval by the Approval Authority. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under § 403.11(b)(1)(i)(B).

(2) The POTW shall notify the Approval Authority of any other (i.e., non-substantial) modifications to its Pretreatment Program at least 30 days prior to when they are to be implemented by the POTW, in a statement similar to that provided for in paragraph (b)(1)(i) of this section. Such non-substantial program modifications shall be deemed to be approved by the Approval Authority, unless the Approval Authority determines that a modification submitted is in fact a substantial modification, 90 days after the submission of the POTW's statement. Following such "approval" by the Approval Authority, such

modifications shall be incorporated into the POTW's permit in accordance with 40 CFR 122.63(g). If the Approval Authority determines that a modification reported by a POTW in its statement is in fact a substantial modification, the Approval Authority shall notify the POTW and initiate the procedures in paragraph (b)(1) of this section.

(c) *Substantial modifications.* (1) The following are substantial modifications for purposes of this section:

(i) Changes to the POTW's legal authorities;

(ii) Changes to local limits, which result in less stringent local limits;

(iii) Changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii);

(iv) Changes to the POTW's method for implementing categorical Pretreatment Standards (e.g., incorporation by reference, separate promulgation, etc.);

(v) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(vi) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(vii) Changes to the POTW's confidentiality procedures;

(viii) Significant reductions in the POTW's Pretreatment Program resources (including personnel commitments, equipment, and funding levels); and

(ix) Changes in the POTW's sludge disposal and management practices.

(2) The Approval Authority may designate other specific modifications, in addition to those listed in paragraph (c)(1) of this section, as substantial modifications.

(3) A modification that is not included in paragraph (c)(1) of this section is nonetheless a substantial modification for purposes of this section if the modification:

(i) Would have a significant impact on the operation of the POTW's Pretreatment Program;

(ii) Would result in an increase in pollutant loadings at the POTW; or

(iii) Would result in less stringent requirements being imposed on Industrial Users of the POTW.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

13. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. 40 CFR 122.63(g) is revised to read as follows:

§ 122.63 Minor modifications of permits.

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 CFR 403.18) as enforceable conditions of the POTW's permits.

[FR Doc. 88-22907 Filed 10-14-88; 8:45 am]

BILLING CODE 6560-50-M

Registered Federal Trade

Monday
October 17, 1988

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status
Report for July 1988

**ENVIRONMENTAL PROTECTION
AGENCY****[OPTS-53108; FRL-3453-1]****Premanufacture Notices; Monthly
Status Report for July 1988****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for July 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53108)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substance, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2102 (15 U.S.C. 2504)), will identify: (a) PMNs received during July; (b) PMNs received previous and still under review at the end of July; (c) PMNs for which the notice review period has ended during July; (d) chemical substances for which EPA has received a notice of commencement to manufacture during July; and (e) PMNs for which the review period has been suspended. Therefore, the July 1988 PMN Status Report is being published.

Date: September 13, 1988.

Steven Newburg-Rinn,
Acting Chief, Public Data Branch, Information
Management Division, Office of Toxic
Substances.

**Premanufacture Notice Monthly Status
Report, July 1988****I. 129 PREMANUFACTURE NOTICES
AND EXEMPTION REQUESTS RE-
CEIVED DURING THE MONTH**

PMN No.	
P 88-1637	P 88-1702
P 88-1638	P 88-1703
P 88-1639	P 88-1704
P 88-1640	P 88-1705
P 88-1641	P 88-1706
P 88-1642	P 88-1707
P 88-1643	P 88-1708
P 88-1644	P 88-1709
P 88-1645	P 88-1710
P 88-1646	P 88-1711
P 88-1647	P 88-1712
P 88-1648	P 88-1713
P 88-1649	P 88-1714
P 88-1650	P 88-1715
P 88-1651	P 88-1716
P 88-1652	P 88-1717
P 88-1653	P 88-1718
P 88-1654	P 88-1719
P 88-1655	P 88-1720
P 88-1656	P 88-1721
P 88-1657	P 88-1722
P 88-1658	P 88-1723
P 88-1659	P 88-1724
P 88-1660	P 88-1725
P 88-1661	P 88-1726
P 88-1662	P 88-1727
P 88-1663	P 88-1728
P 88-1664	P 88-1729
P 88-1665	P 88-1730
P 88-1666	P 88-1731
P 88-1667	P 88-1732
P 88-1668	P 88-1733
P 88-1669	P 88-1734
P 88-1670	P 88-1735
P 88-1671	P 88-1736
P 88-1672	P 88-1737
P 88-1673	P 88-1738
P 88-1674	P 88-1739
P 88-1675	P 88-1740
P 88-1676	P 88-1741
P 88-1677	P 88-1742
P 88-1678	P 88-1743
P 88-1679	Y 88-0213
P 88-1680	Y 88-0214
P 88-1681	Y 88-0215
P 88-1682	Y 88-0216
P 88-1683	Y 88-0217
P 88-1684	Y 88-0218
P 88-1685	Y 88-0219
P 88-1686	Y 88-0220
P 88-1687	Y 88-0221
P 88-1688	Y 88-0222
P 88-1689	Y 88-0223
P 88-1690	Y 88-0224
P 88-1691	Y 88-0225
P 88-1692	Y 88-0226
P 88-1693	Y 88-0227
P 88-1694	Y 88-0228
P 88-1695	Y 88-0229
P 88-1696	Y 88-0230
P 88-1697	Y 88-0231
P 88-1698	Y 88-0232
P 88-1699	Y 88-0233
P 88-1700	Y 88-0234
P 88-1701	

**II. 279 PREMANUFACTURE NOTICES
RECEIVED PREVIOUSLY AND STILL
UNDER REVIEW AT THE END OF THE
MONTH**

PMN No.	PMN No.
P 83-0689	P 87-1770
P 84-1182	P 87-1787
P 84-1183	P 87-1830
P 85-0216	P 87-1865
P 85-0535	P 87-1872
P 85-0536	P 87-1879
P 85-0619	P 87-1881
P 85-0718	P 87-1882
P 85-0941	P 88-0049
P 86-0065	P 88-0079
P 86-0066	P 88-0083
P 86-0067	P 88-0134
P 86-0092	P 88-0138
P 86-0294	P 88-0156
P 86-0295	P 88-0157
P 86-0592	P 88-0182
P 86-1078	P 88-0195
P 86-1189	P 88-0225
P 86-1235	P 88-0245
P 86-1356	P 88-0275
P 86-1602	P 88-0290
P 86-1603	P 88-0319
P 86-1804	P 88-0320
P 86-1607	P 88-0353
P 87-0057	P 88-0387
P 87-0058	P 88-0388
P 87-0059	P 88-0393
P 87-0068	P 88-0410
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III. 183 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERI- OD HAS ENDED DURING THE MONTH. (EXPIRATION OR THE NO- TICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY)

PMN No.

P 85-0901
P 87-0318
P 87-0548
P 87-0640
P 87-1159
P 87-1201
P 87-1553
P 87-1760
P 87-1784
P 87-1830
P 87-1865
P 88-0129
P 88-0244
P 88-0288
P 88-0395
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P 88-0712
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IV. 163 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/generic name	Date of commencement
P 80-0010	G Substituted ketone pyran	Sept. 10, 1987.
P 80-0020	G Polymer of alkyl amine methacrylic acid ester, alkylmethacrylate and styrene	June 23, 1988.
P 82-0289	Polymer of ethylene oxide, bisphenol A, epichlorohydrin, acrylonitrile, ethylene oxides, xylenediamine and isophorondiamine.	Mar. 25, 1988.
P 82-0298	G Polymer of alkyl acrylate and acrylamide	Aug. 20, 1984.
P 82-0650	G Pentasubstituted pentanamide	May 10, 1988.
P 83-0104	G Polyamine urea formaldehyde condensate	May 12, 1988.
P 83-0603	G Substituted nitrile	Oct. 6, 1983.
P 84-0266	G Modified fluoroalkyl urethane	June 30, 1988.
P 84-0341	Polyoxy(1-oxo-1,6-hexanediyl), alpha-hydro-omega-hydroxy-ester with 3-hydroxy-2,2-dimethylpropyl 3-hydroxy-2,2-dimethylpropanoate(2:1), di-2-propanoate.	May 20, 1985.
P 84-0571	Benzene, 1,1'-ethyldenebis	May 20, 1988.
P 84-0584	G Methyl alkanoate ester	Jan. 1, 1985.
P 84-0589	G Hydrazone	June 20, 1988.

IV. 163 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 84-0590	G Azopigment.....	Do.
P 84-0598	G Alkoxy functional alkyl substituted silicone resin	Dec. 28, 1984.
P 85-1106	G Alkenyl acetate.....	Apr. 14, 1988.
P 86-0007	Polymer of: terephthalic acid; isophthalic acid; adipic acid; trimellitic anhydride; 2,2-dimethyl-1,3-propanediol; ethylene glycol; and trimethylolpropane.	May 25, 1988.
P 86-0256	G Substituted heterocycle azo naphthalenesulfonic acid, salt.....	Feb. 22, 1988.
P 86-0447	G Tricyclic olefinic hydrocarbons	Apr. 30, 1986.
P 86-0571	Alkenes reaction products with 2,5-furandione substituted alkyl amines.....	Nov. 13, 1987.
P 86-0874	G Organosulfur modified epdm	June 15, 1988.
P 86-0887	G Fluorinated telomer.....	June 27, 1988.
P 86-1106	G Acid acid, cyano-, butyl ester	Apr. 14, 1988.
P 86-1162	G Copper complex of substituted (substituted sulfonaphthyl)(hydroxysulf phenyl azo substituted sulfonaphthyl) triazine, sodium salt.	May 6, 1988.
P 86-1712	G Alkoxyated diphenol.....	June 9, 1988.
P 87-0044	Naphthalene, 2-diazo-8-sulfo-6-((2 (sulfoxy)ethyl) sulfonyl), hydrogen sulfate	May 20, 1988.
P 87-0158	4-Ethenylphenol acetate.....	Aug. 17, 1987.
P 87-0288	G Substituted naphthalene sulfonic acid.....	May 20, 1988.
P 87-0349	G Partially crosslinked saturated polyester with medium number-average molecular weight	July 10, 1987.
P 87-0366	Polymer of trichloromethylsilane; dichlorodimethylsilane; and trichlorophenylsilane	Nov. 14, 1987.
P 87-0378	G Thio-organotin complex.....	May 6, 1988.
P 87-0412	G Copolyester.....	June 22, 1988.
P 87-0419	G Vinyl methyl hydro polysilane	May 14, 1988.
P 87-0673	G Diphenylmethane-4,4-diisocyanate, polymer with (1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 2,2-dimethyl-1,3-propanediol and (cyclotetrasiloxane octane polymer with 3,3-(1,1,3,3-tetramethyl-1,3-disiloxanedyl)bis(1-propaneamine).	June 13, 1987.
P 87-0707	Poly(ester-amide)	May 15, 1988.
P 87-0713	G Cyclic amide-aldehyde polymer.....	June 30, 1988.
P 87-0752	Hexane-1,6-diisocyanate oligomers with polyol modification.....	June 29, 1988.
P 87-0776	G Sodium salt of dicarboxylic acid.....	May 11, 1988.
P 87-0796	G Substituted benzothiazole sulfonic acid	May 20, 1988.
P 87-0916	G Isocyanate capped epoxy resin.....	May 31, 1988.
P 87-1022	G Alicyclic aliphatic polyester	May 26, 1988.
P 87-1051	G Polycarbonate polyurethane dispersion	June 8, 1988.
P 87-1063	G Solid bisphenol a type epoxy resin.....	June 1, 1988.
P 87-1076	G Polyetheramide based on nylon 6-monomers.....	Nov. 12, 1987.
P 87-1126	G 1,1'-ethylene-2,2'-bipyridylum dibromide.....	Dec. 10, 1987.
P 87-1197	G Humic acid, sodium salt, tetrapolymer with acrylic monomers.....	June 21, 1988.
P 87-1301	G Polycondensate of formaldehyde with amines.....	May 17, 1988.
P 87-1302	G Isobenzofuranone, 3,4-(diethylamino-2-hydroxyphenyl)-3-(2-methoxy-4-methyl-5-arylphenyl)-.....	July 11, 1988.
P 87-1330	G 1,4-Benzenedicarbonyl dichloride polymer with bis(4-phenoxyphenyl) methanol and substituted benzene.....	Sept. 25, 1987.
P 87-1360	G Aromatic sulfonyl chloride.....	May 23, 1988.
P 87-1382	G Copolyamide of caprolactam, hexamethylene diamine and azelic acid.....	May 4, 1988.
P 87-1498	Buten-2-oic acid, cyclohexyl ester	Apr. 28, 1988.
P 87-1513	Olefin terminated polythioether polymer	Nov. 5, 1987.
P 87-1526	Mercaptan terminated polythioether polymer	Nov. 25, 1987.
P 87-1554	G Polyfluorinated copolymers.....	June 27, 1988.
P 87-1560	G Poly(propylene carbonate).....	Apr. 14, 1988.
P 87-1612	G Polyester from aromatic dicarboxylic acid ester, aliphthalic diols and oxirane polymer	May 19, 1988.
P 87-1631	G Alkenes, long chain alkyl	May 10, 1988.
P 87-1641	G Vinylidene chloride/butadiene polymer with alkaneic and alkanedioic acids.....	June 6, 1988.
P 87-1642	G Vinylidene chloride, butadiene, polymer with alkane dioic acid	June 10, 1988.
P 87-1678	3-dodecenyl-1-(2,2,6,6-pentamethyl-4-piperidyl)-5- pyrrolidinedione.....	June 16, 1988.
P 87-1798	G Alkylester functionalized colloidal silica	May 18, 1988.
P 87-1817	G Aromatic anhydride.....	Apr. 8, 1988.
P 87-1832	G Calcium salt of butyric acid telomer.....	Mar. 12, 1988.
P 87-1834	G Acrylic copolymer resin	Mar. 11, 1988.
P 87-1838	G Acrylic lactone copolymer	Apr. 21, 1988.
P 87-1839	G Acrylic lactone copolymer	Apr. 29, 1988.
P 87-1840	G Alkoxyated amine alcohol.....	Dec. 20, 1987.
P 87-1842	Polymer of dimethylterephthalene; ethylene glycol; neopentyl glycol; isophthalic acid; adipic acid.....	Feb. 22, 1988.
P 87-1844	Toluene.....	Apr. 12, 1988.
P 87-1847	G Organosilane	May 7, 1988.
P 87-1848	Organopolysiloxane.....	Do.
P 87-1868	G Chloroalkylchlorosilane.....	Mar. 14, 1988.
P 87-1869	G Amino alkyl silane	Do.
P 87-1874	G Bismalidine.....	Mar. 15, 1988.
P 87-1887	G Modified acrylic copolymer	Feb. 5, 1988.
P 87-1901	G Methoxy-methacrylate siloxane.....	Mar. 14, 1988.
P 87-1902	G Organofunctional Polysiloxane	Do.

IV. 163 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-1903	G Polydimethylsiloxane.....	Mar. 14, 1988.
P 88-0027	G Substituted phenyl bis(substituted aminophenyl) methylum salt.....	June 1, 1988.
P 88-0037	G Self-crosslinking, blocked polyurethane system.....	May 23, 1988.
P 88-0057	Adduct of maleated polyene and aminopropyl triethoxysilane.....	Feb. 11, 1988.
P 88-0062	Dimer diisocyanate reaction polybutadiene.....	May 9, 1988.
P 88-0075	G Styrene/butadiene/polymer with alkanolic acid and alkane ester.....	June 7, 1988.
P 88-0119	G Carbopolycyclic methyl ammonium polycycle chloride.....	June 22, 1988.
P 88-0144	G Alkyd resin.....	May 4, 1988.
P 88-0375	G Amine-modified polyalkylene glycol polymer.....	Apr. 5, 1988.
P 88-0379	G Aromatic ketone.....	Apr. 4, 1988.
P 88-0380	G Polyether ketone.....	Apr. 13, 1988.
P 88-0385	G Acryl styrene resin with cross-linking 1,3,5-triazine-2,4,6-triamine, N,N,N,N,N-hexakis-methoxymethyl(methyloxymethyl).....	Mar. 13, 1988.
P 88-0386	G Hydroxy resin.....	Apr. 20, 1988.
P 88-0390	G Copolyester.....	June 10, 1988.
P 88-0397	G polyester acetate.....	Apr. 18, 1988.
P 88-0400	G N-(Substituted-imidazolium chloride)-alkyl stearamide.....	Mar. 30, 1988.
P 88-0421	G Trialkyl triazine.....	May 23, 1988.
P 88-0432	lh-Pyrole-2,5-dione, 1,1'-(methylenedi-4,1-phenylene)bis-, polymer with 4,4'-methylenebis(benzenamine), modified.....	Mar. 20, 1988.
P 88-0433	lh-Pyrole-2,5-dione, 1,1'-(methylenedi-4,1-phenylene)bis-, polymer with 4,4'-methylenebis(benzenamine) modified.....	Do.
P 88-0444	G Precious metal plating solution.....	Mar. 21, 1988.
P 88-0445	G Precious metal plating solution.....	Do.
P 88-0447	G Substituted benzene sulfonic acid.....	May 25, 1988.
P 88-0486	Polymer of 1-ethenyl-4-methylbenzene, 2-ethylhexyl ester 2-propenoic acid, 2-methyl-2-propenoic acid-2-methyl propyl ester, and 2-methyl-2-propanoic acid-1,2-ethanediyl ester.....	May 11, 1988.
P 88-0495	G Substituted Phenylpolyoxyalkylene.....	Mar. 29, 1988.
P 88-0496	G Disubstituted naphthol-azo-carboxycyclopolyoxyalkylene.....	Do.
P 88-0497	G Trisubstituted naphthol-azo-carboxycyclopolyoxyalkylene.....	Do.
P 88-0498	G Substituted phenylpolyoxyalkylene.....	Do.
P 88-0500	G Rubber modified polyamide.....	Apr. 22, 1988.
P 88-0501	G Aliphatic aromatic reaction products.....	Do.
P 88-0502	G S-Triaryl-branched aryl-alkyl-aryl-capped polycarbonate.....	Apr. 19, 1988.
P 88-0505	G Hydroxypropyl acrylate, acrylic acid polymer, ammonium salt.....	Apr. 6, 1988.
P 88-0517	2-Methyl-1-pentyloxy magnesium chloride.....	June 6, 1988.
P 88-0548	G Water-reducible styrenated alkyd resin.....	Apr. 11, 1988.
P 88-0557	G Polysubstituted-substituted-benzene.....	June 2, 1988.
P 88-0558	G Hydroxyacrylic resin.....	May 6, 1988.
P 88-0559	1,3 Isobenzofurandione, 5,5'-(2,2,2-trifluoro-1-trifluoromethyl)ethylidene, bis-, benzenamine,3-ethoxyl-, benzenamine, 3,3'-(Phenylenebis(oxy)bis-.....	June 21, 1988.
P 88-0584	G Polydimethylsiloxane.....	June 20, 1988.
P 88-0588	G Acrylic copolymer emulsion.....	Apr. 19, 1988.
P 88-0592	G Aliphatic polyester polyurethane.....	June 15, 1988.
P 88-0608	G Halogenated alkane.....	May 25, 1988.
P 88-0620	G Derivative of poly(oxy(1-ethyl-1,2-ethanediyl))-alpha-(p-tetra(propene)-phenoxy-omega-hydro)ester with carbonochloridic acid.....	May 16, 1988.
P 88-0638	G Isophorone diisocyanate and methylenebis(4-cyclohexylisocyanate)-terminated polytetrahydrofuran and ethylene oxide-capped polypropylene glycol.....	June 22, 1988.
P 88-0643	G Benzyl-alkyl-substituted-ammonium salt.....	May 23, 1988.
P 88-0666	G Aromatic polyester carbonate.....	July 1, 1988.
P 88-0678	G Trialkoxysilane derivative.....	June 6, 1988.
P 88-0679	G Trialkoxysilane derivative.....	Do.
P 88-0690	G Vinylacrylic, vinylheterocycle, vinylalkoxysilane, vinylal acrylate copolymer, alkenate modified.....	June 22, 1988.
P 88-0691	G Nonylphenol capped polyurethane prepolymer.....	July 14, 1988.
P 88-0695	G Substituted polysiloxane.....	June 29, 1988.
P 88-0698	G Silicone blocked copolymer.....	May 24, 1988.
P 88-0707	G Substituted N,N-dimethylcarboxamide heterocycle.....	May 15, 1988.
P 88-0804	G Saturated polyester.....	June 23, 1988.
P 88-0835	G Substituted-imidazolyl-substituted-alkylamino-substituted-benzoic acid derivative.....	May 25, 1988.
P 88-0858	G Organo epoxysilicone.....	June 30, 1988.
P 88-0871	Diphenyl methane diisocyanate, polypropylene glycol, poly(oxypropylene) glycerol polymer blocked with methylethyl ketoxime.....	May 31, 1988.
P 88-0872	Toluendiisocyanate, polybutylene glycol, trimethylpropane polymer blocked with epsilon-caprolactam.....	Do.
P 88-0893	G Reaction product of polytetramethylene ether glycol, methylene bis(phenyl isocyanate), and diol.....	July 1, 1988.
P 88-0950	G Benzenepolycarboxylic acid, alkyl ester.....	June 6, 1988.
P 88-0965	G Vinyl-acrylic copolymer.....	June 15, 1988.
P 88-0968	G Di(polyoxyethylene) alkyl ether phosphate.....	June 10, 1988.
P 88-0973	G Carbamic acid, 1,6-hexanediylbis-, diethyl ester.....	June 17, 1988.
P 88-0990	G Oxirane/anhydride polyester resin.....	June 13, 1988.
P 88-1004	G Hydroxy-substituted polyester.....	July 6, 1988.

IV. 163 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 88-1068	G Fatty acid copolymer	June 26, 1988.
P 88-1108	G Alcohols, C16-12, ethoxylated, reaction product with maleic anhydride	July 20, 1988.
P 88-1634	G Substituted malononitrile	May 4, 1988.
Y 87-0077	G Poly(oxy-1,4-butanediylloxycarbonyl-1,4-phenylene-carbonyl), reaction product with hexosubstituted heteromono-cycle.	May 9, 1988.
Y 87-0180	G Copolyester	May 23, 1988.
Y 88-0054	G Styrene copolymer	Apr. 26, 1988.
Y 88-0077	G Acrylic copolymer, ammonium salt	May 9, 1988.
Y 88-0106	2-Methylpentamethylenediamin; zinc oxide; isophthalic acid; orthophosphorous acid; high molecular weight aliphatic primary alcohol;	June 1, 1988.
Y 88-0128	Polyacrylic acid, partial sodium salt; modified polyacrylic acid	Mar. 31, 1988.
Y 88-0130	Polymer of aromatic diacid, alkanediol, and branched alkanediol	Apr. 23, 1988.
Y 88-0135	G Rosin modified phenolic resin	April 24, 1988.
Y 88-0136	G Rosin modified phenolic resin	Do.
Y 88-0139	G Polymer of aromatic diacid, alkanediol, and branched-alkanediol	May 2, 1988.
Y 88-0140	G Aliphatic polyester urethane	Apr. 8, 1988.
Y 88-0169	G Polyether-type polyurethane	May 31, 1988.
Y 88-0170	G Unsaturated polyester resin	May 6, 1988.
Y 88-0171	G Random copolymer emulsion	Do.
Y 88-0176	G Butadiene-containing polymer	May 10, 1988.
Y 88-0180	G Aliphatic urethane	May 23, 1988.
Y 88-0185	G Polyvinyl acetate poly(alkyleneoxy)acrylate copolymer	June 27, 1988.
Y 88-0188	G Styrene/acrylic modified alkyd copolymer	June 17, 1988.
Y 88-0203	G Water-reducible alkyd resin	June 28, 1988.

V. 51 PREMANUFACTURE NOTICES
FOR WHICH THE PERIOD HAS BEEN
SUSPENDED

PMN No.

P 88-0609	P 88-1240
P 88-0758	P 88-1246
P 88-0875	P 88-1250
P 88-1005	P 88-1251
P 88-1020	P 88-1275
P 88-1037	P 88-1276
P 88-1109	P 88-1277
P 88-1115	P 88-1278
P 88-1116	P 88-1293
P 88-1117	P 88-1304
P 88-1118	P 88-1308
P 88-1120	P 88-1313
P 88-1121	P 88-1314
P 88-1122	P 88-1317
P 88-1162	P 88-1529
P 88-1168	P 88-1559
P 88-1180	P 88-1561
P 88-1189	P 88-1569
P 88-1197	P 88-1571
P 88-1205	P 88-1572
P 88-1211	P 88-1622
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P 88-1220	P 88-1674
P 88-1229	P 88-1675
P 88-1231	

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Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200 et al.

**Disclosure of Social Security Numbers
and Employer Identification Numbers by
Applicants and Participants in HUD
Programs; Proposed Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 201, 203, 205, 207, 213, 215, 221, 232, 234, 235, 236, 241, 242, 244, 247, 250, 251, 255, 290, 501, 510, 570, 590, 750, 813, 880, 881, 882, 883, 884, 885, 886, 900, 904, 905, 913, and 960

[Docket No. R-88-1419; FR-2501]

Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would require certain individuals to disclose their Social Security Numbers (SSNs) when they apply for participation in a program subject to this rule, or when their continuing eligibility to participate in the program is determined. In addition, it would require certain entities to disclose their Employer Identification Numbers, and certain officials of these entities to disclose their SSNs, when the entities apply for participation in a covered program. Failure of any individual or entity to make the required disclosure would constitute grounds for denying eligibility, or continuing eligibility, under the program involved.

Covered programs would include those providing only FHA mortgage and loan insurance and coinsurance under 24 CFR Chapter II, Subchapter B; other housing assistance programs and related authorities under 24 CFR Chapter II, Subchapter B; the Rehabilitation Loan, Community Development Block Grant, Urban Development Action Grant, and the Urban Homesteading programs under 24 CFR Chapter V; and the Section 8, and Public and Indian Housing programs under 24 CFR Chapters VIII and IX.

The rule would enable HUD to use social security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the rule.

DATE: Comments must be received by December 16, 1988.

ADDRESS: Comments on the rule: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the

above docket number and title. A copy of each communication submitted will be available for public inspection by interested persons during regular business hours in the Office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT:

For programs administered by the Assistant Secretary for Housing: James Tahash, Director of Planning and Procedures, Office of Multifamily Housing Management, room 6182, 451 7th St. SW., Washington, DC 20410, telephone number (202) 426-3944. For programs administered by the Assistant Secretary for Public and Indian Housing: Edward C. Whipple, Chief, Occupancy Branch, room 4206, 451 7th St. SW., Washington, DC 20410, telephone number (202) 426-0744. For programs administered by the Assistant Secretary for Community Planning and Development: Jo Ann W. Stanton, Director, Office of Management, room 7240, 451 7th St. SW., Washington, DC 20410, telephone number (202) 755-6898. For questions concerning the collection and use of social security and Employer Identification numbers: Dennis Raschka, Director, Fraud Control Division, Office of Inspector General, room 8254, telephone (202) 426-6493, 541 7th Street, SW., Washington, DC 20410. For questions concerning the applicability of the Privacy Act or the Freedom of Information Act: Burton Bloomberg, Associate General Counsel for Equal Opportunity and Administrative Law, room 10244, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-7203. None of these listed telephone numbers is toll-free.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided later in this preamble under the subheading, "Findings and

Certifications." Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20420; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Statutory Basis

This proposed rule would implement section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) for a number of HUD programs. Section 165(a) authorizes HUD to require applicants and participants (and members of their households) in any HUD program involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, to disclose their social security numbers (SSNs) or Employer Identification Numbers (EINs) to HUD. This disclosure is made an explicit condition of initial or continuing eligibility for participation in any of these programs, and is also designed to ensure the proper level of benefits under these programs.

Section 165(b) requires HUD to define the terms "applicant" and "participant" by regulation. It specifies, however, that the terms may not include persons acting purely in their official capacity, such as State or local government officials or officers of lending institutions.

Structure of Rule

This proposed rule would implement the requirements for the disclosure of SSNs and EINs through four independent, but parallel, provisions. These are:

1. *24 CFR Part 200, Subpart T:* This subpart would cover the TMAP/Assignment, Occupied Conveyance, and Rent Supplement programs; the Section 221(d)(3) BMIR, 235, and 236 programs; and the Management and Preservation of HUD Multifamily Projects authority under 24 CFR Part 290.

2. *24 CFR Part 200, Subpart U:* This subpart would apply to the other loan and mortgage insurance and coinsurance programs administered by HUD under 24 CFR Chapter II, Subchapter B.

3. *24 CFR Part 501:* This part would cover the Rehabilitation Loan, Rental Rehabilitation, and Urban Homesteading programs, and elements of the Community Development Block Grant (CDBG) and the Urban

Development Action Grant (UDAG) programs, under 24 CFR Chapter V.

4. *24 CFR Part 750*. This part would cover most of the housing assistance programs administered by HUD under 24 CFR Chapters VIII and IX.

The remainder of the rule contains conforming changes that are designed to incorporate the proposed disclosure requirements into the existing regulatory provisions to which the rule would apply. Readers should review these changes carefully to determine matters such as the timing and context of the required disclosures, and the effect upon eligibility, or continued eligibility, caused by a failure to meet these requirements.

Programs Covered by the Rule

The disclosure requirements contained in this proposed rule would apply to the following programs:

1. *24 CFR Part 200, Subpart T*. (a) Temporary Mortgage Assistance Payments (TMAP) and Assignment of Mortgages to HUD under Part 203, Subpart C.

[It should be noted that the conforming amendments to Part 203 amend the currently effective rules for the Assignment program. The TMAP and revised Assignment program rules have been published in final form, but have not yet been made effective. The Department proposes to subject TMAP and the revised Assignment authority to the requirements of this rule, and will do so either in the final rule in this proceeding or when the TMAP/revised Assignment rule takes effect.]

(b) Occupied Conveyance under Part 203, Subpart C.

(c) Rent Supplement Payments under Part 215.

(d) Low Cost and Moderate Income Mortgage Insurance for Below Market Interest Rate (BMIR) Mortgages under Part 221.

(e) Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation under Part 235.

(f) Mortgage Insurance and Interest Reduction Payments for Rental Projects under Part 236.

(g) Management of HUD-Owned Multifamily Housing Projects under Part 290.

2. *24 CFR Part 200, Subpart U*. All mortgage and loan insurance and coinsurance programs contained in Subchapter B of 24 CFR chapter II, other than those covered by 24 CFR Part 200, Subpart T. These would include:

(a) Property improvement and manufactured home loan programs under Part 201.

(b) Single family mortgage insurance programs under Parts 203, 213, 220, 221, and 234, and Title I insured loans.

(c) Multifamily mortgage insurance programs under Parts 207, 213, 220, and 221.

(d) Multifamily coinsurance programs pursuant to Parts 250, 251, and 255.

(e) Mortgage insurance for nursing homes and related facilities under Part 232 and for hospitals under Part 242.

3. *24 CFR Part 501*. (a) Rehabilitation Loan program under Part 510.

(b) Relocation payments and assistance under the Community Development Block Grant program (Part 570).

(c) Private participating parties under the Urban Development Action Grant program (Part 570, Subpart G).

(d) The Urban Homesteading program under Part 590.

4. *24 CFR Part 750*. The Section 8, and Public and Indian Housing programs, as follows:

(a) Section 8 Housing Assistance Payments for New for the Elderly or Handicapped under Part 885.

(b) Section 8 Housing Assistance Program for Substantial Rehabilitation under Part 881 (including Section 8 assisted loans for the Elderly or Handicapped under Part 885).

(c) Section 8 Housing Assistance Payments for Housing Certificates and Moderate Rehabilitation under Part 882.

(d) Section 8 Housing Assistance Payments, State Housing Agencies, under Part 883.

(e) Section 8 Housing Assistance Payments, New Construction Set-Aside for Section 515 Rural Rental Housing Projects under Part 884.

(f) Section 8 Housing Assistance Payments, Special Allocations under Part 886, Subpart A (Loan Management) and Subpart C (Property Disposition).

(g) Housing Vouchers under Part 887.

(h) Section 23 Housing Assistance Payments, New Construction and Substantial Rehabilitation, under Part 900.

(i) Low Rent Housing Homeownership Opportunities under Part 904.

(j) Indian Housing under Part 905.

(k) Admission to, and Occupancy of, Public Housing under Part 960.

The Department has selected these programs because they involve an initial or periodic (or both) review of income or credit standing for eligibility in a HUD program, and this information can more easily be accessed for verification with the social security number as an identifier. Additions to this list may occur when Congress authorizes new programs that meet these requirements, or when other existing programs administered by the Department

demonstrate a need for coverage by this rule.

"Applicants" Subject to the Rule

The rule would cover two broad classes of "applicants": "individual applicants" and "entity applicants." Generally, "individual applicants" would be those seeking to participate in a covered program in their own right. Examples include an individual or family seeking home mortgage insurance, admission to public or Indian housing, or a Section 8 Certificate or Voucher.

"Entity applicants" generally would refer to those that seek to participate in a covered program, other than in an individual right. Entities could include a corporation, partnership, or other "non-individual" entity. Examples include corporate mortgagors seeking to participate in an FHA multifamily mortgage insurance program or partnerships seeking to own a project under the Section 8 New Construction program.

The following is the complete listing of "applicants" that would be covered under the rule:

1. *24 CFR Part 200, Subpart T*

(a) "Individual Applicant"

(i) A mortgagor who seeks TMAP or Assignment assistance under Part 203, Subpart C.

(ii) An occupant who wishes to occupy a property after HUD has acquired it under Part 203, Subpart C.

(iii) An individual or family that seeks assistance under Part 215, 221 (BMIR), 236 or 290.

(iv) A homeowner or cooperative member seeking homeownership assistance under Part 235.

(v) An individual or individuals who seek to participate as private owners under Part 215, 221 (BMIR), or 236.

(b) "Entity applicant" A partnership, corporation, or other association or entity, either non-profit or for-profit, that seeks to participate as a private owner under 24 CFR Part 215, 221 (BMIR), or 236.

2. *24 CFR Part 200, Subpart U*.

(a) "Individual applicant" An individual or individuals who apply for mortgage or loan insurance or coinsurance under any of the programs providing only such insurance or coinsurance under 24 CFR Chapter II, Subchapter B, or who seek to assume an existing insured loan, and who intend to hold the mortgaged property in their individual right.

(b) "Entity applicant" A partnership, corporation, or other association or entity, either profit or non-profit, that seeks to participate in any of the

mortgage or loan insurance or coinsurance programs under 24 CFR Chapter II, Subchapter B, or that seeks to participate in the assumption of an existing insured mortgage. Examples of an entity applicant include a for-profit corporation that wishes to become a private owner of a multifamily project, or a partnership that seeks to establish a board and care home.

3. 24 CFR Part 501.

(a) "Individual applicant"

(i) An individual borrower under the Rehabilitation Loan Program (Part 510).

(ii) An individual or family seeking relocation payments and assistance under the CDBG program (24 CFR 570.202(i)).

(iii) A homesteader under the Urban Homesteading program (Part 590).

(b) "Entity applicant"

(i) An entity borrower under the Rehabilitation Loan program.

(ii) A business, non-profit organization, or farm operation seeking relocation payments and assistance under the CDBG program (24 CFR 570.202(i)).

(iii) A private participating party under the UDAG program.

4. 24 CFR Part 750.

(a) "Individual applicant"

(i) An individual or family wishing to participate, or to receive assistance, as appropriate, under Part 880, 881, 882, 883, 884, 885, 886, 887, 904, or 960.

(ii) A family seeking assistance under Part 900.

(iii) A prospective tenant or homebuyer under Part 905.

(iv) An individual who seeks to participate as a private owner in any of the programs contained in 24 CFR Part 850, 880, 881, 883, 884, 885, or 886.

(b) "Entity Applicant" A partnership, corporation, or any other association of entity, either non-profit or for-profit, that seeks to participate as a private owner in any of the programs contained in 24 CFR Part 880, 881, 883, 884, or 886.

"Participants" Subject to the Rule

"Participants" subject to the rule's proposed disclosure requirements would be limited to individuals or families receiving a form of housing assistance that provides for determinations of continuing eligibility for the assistance involved. Thus, only 24 CFR Part 200, Subpart T, and Part 750 would have "participants." The following would be "participants" under these programs:

1. 24 CFR Part 200, Subpart T.

(a) A mortgagor who is receiving TMAP or assignment assistance under Part 203, Subpart C.

(b) An occupant who occupies a property after HUD has acquired it under Part 203, Subpart C.

(c) A tenant under Part 215, 221 (BMIR), 236, or 290.

(d) A homeowner or a cooperative member receiving homeownership assistance under Part 235.

2. 24 CFR Part 750.

(a) A family receiving assistance under Parts 880, 881, 882, 883, 884, 886, 887, 900, or 960.

(b) A homebuyer under Part 904.

(c) A homebuyer or tenant under Part 905.

Exclusion of Certain Individuals and Entities From the Rule's Coverage

As noted above, section 165 of the 1987 Act excludes from its coverage those persons whose participation in a covered program is limited to their official capacity, such as State or local government officials or officials of lending institutions. The Department believes that this provision is designed to exclude individuals whose sole function with respect to a transaction under a covered program is to *facilitate* the objective of the transaction.

Thus, using the statutory examples, officials and employees of a State Housing Finance Agency that is serving as contract administrator under the State Agency Section 8 program (Part 883) would not have to disclose their SSNs for purposes of carrying out their responsibilities for the Agency. Similarly, officials of a private lending institution that is to serve as a mortgagee for an FHA insurance transaction would not be required to disclose their SSNs in connection with the transaction.

These statutory exclusions reflect the fact that the State or local agencies and private lenders, as well as their officials, do not *participate* in the program involved: their role is limited to aiding the successful completion of the transaction. Thus, these entities do not have a sufficiently strong link to the transaction to justify mandatory disclosure of their SSNs.

By contrast, however, the Department does not believe that the "official capacity" exclusion applies to officials of an entity that is seeking to *participate* in a covered program, for example, by becoming the owner of a Section 8 New Construction project. In such circumstances, the participation of the entity results in a continuing relationship with the Department that may involve substantial sums of money. Requiring the principals of these entities to disclose their SSNs could be essential to averting fraud, waste, and abuse in the program involved, and the Department does not believe that Congress intended to grant them a

categorical exemption from the requirement under section 165.

Consequently, the proposed rule specifically exempts from the proposed SSN disclosure requirements those officials and employees of entities that are not actually participating in the programs involved. It would make clear, however, that principals of entity *applicants* would be subject to the required disclosures. "Principals" would include officers, directors, principal stockholders, or such other officials as HUD may prescribe in administrative instructions.

The rule would also exclude from the disclosure requirements public housing agencies (PHAs) that participate in any covered program, irrespective of whether the PHA is acting as a facilitator (for example, as a Section 8 contract administrator), or as an actual participant (as where the PHA is a Section 8 project owner or the owner and operator of public housing). Other instances in which public entities would be excluded from the disclosure requirements under the proposed rule include where the governments of Guam and Hawaii, the Hawaiian Home Lands Commission, and Indian Tribes are mortgagors or co-mortgagors under sections 214, 247, and 248, respectively, of the National Housing Act.

The exclusions cited above are based upon the discretion accorded the Department by section 165(b) of the 1987 Act to define the terms "applicant" and "participant." Each of these entities involves a form of governmental body, many of which have had long and productive relationships with the Department. The Department does not believe that the fraud, waste, and abuse exposure where these entities are involved—whether as a facilitator of, or a participant in, HUD's programs—is sufficiently great, or the possibility of recovery where there is an instance of these problems so poor, that the Department should require the entity to produce its EIN and the principal officials their SSNs as a condition of participation in a covered program.

Other definitions

1. *Social Security Number.* The rule would define "Social Security Number" as follows:

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include

a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

This definition is based upon that used in the regulations of the Internal Revenue Service (IRS).

2. *Employer Identification Number.* "Employer Identification Number" would be defined as follows:

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

This definition is also patterned after that used in IRS regulations.

3. *Processing entity.* "Processing entity" would be defined as the person or entity that is responsible for making determinations regarding an applicant's eligibility, or a participant's continuing eligibility, for participation in the program involved. Examples of "processing entity" would include private owners or PHA owners under the Section 8 program; PHAs or Indian Housing Authorities (IHAs) that own and operate Public and Indian Housing projects; mortgagees under the Direct Endorsement program (§ 200.163); owners of Section 236, 221(d)(3) BMIR, or Rent Supplement projects; or lenders under FHA mortgage coinsurance authorities.

Required Disclosures Under the Rule

1. *Social Security Numbers: Individual Applicants, Participants, and Certain Officials of Entity Applicants.* Each individual applicant and each participant would be required to disclose the complete and accurate social security number(s) assigned to such person. This requirement would extend to each member of the household of the applicant or participant, except that in the FHA authorities subject to Part 200, Subpart U, only family members that will be obligated to pay the debt evidenced by the mortgage or loan documents would have to provide social security numbers. In the Section 235 program, only family members 18 years or older would have to make the required disclosure. Each officer, director, principal stockholder (as defined in HUD administrative instructions), and such other officials as HUD may require, of an entity applicant would be required to make the same disclosure.

The disclosure requirements for individual applicants and participants,

as well as members of their households, are explicitly authorized by section 165 of the 1987 Act. With the exception of FHA programs subject to Part 200, Subpart T, the Department believes that full implementation of the authority accorded under section 165 is essential to achievement of the legislative objective of controlling fraud, waste and abuse in HUD programs. Each of the individuals required under the rule to disclose their Numbers are receiving some form of assistance from the Department, thereby justifying the Department's interest in ensuring that they are appropriate program beneficiaries.

In the case of FHA insurance, the Department believes that family members (other than those who will actually be parties to the transaction) do not benefit in the same way as participants in the Department's assistance programs. Thus, the Department believes that extending the rule's coverage to these individuals is unnecessary for purposes of mitigating fraud, waste, and abuse and would impose an inappropriate burden.

As noted above, the Department believes that its efforts to reduce the incidence of fraud, waste, and abuse in HUD programs necessitate the disclosure of personal social security numbers by certain key officials of an entity. Mere reliance on the entity's Employer Identification Number will often fail to reveal information needed to determine the suitability of its officials to participate in HUD's programs.

The rule would provide that no person who is under the age of six years, or who has not been issued a SSN, would be subject to the disclosure requirements. The age exception is consistent with Section 6109(e) of the Internal Revenue Code of 1986. That provision requires taxpayers to include in their tax return a dependent's social security number whenever claiming one or more exemptions for dependents who are at least five years of age before the close of a taxable year. This proposed rule uses the age of six (rather than five before the close of the taxable year) to provide a clear, uniform standard, without the need to determine a dependent's age within a given taxable year.

The exclusion for persons who have not been assigned a SSN reflects the Department's belief that section 165 extends only to the disclosure of assigned Numbers, and is not intended to require the assignment of a Number as a condition to initial or continued participation in a covered program.

In addition, the rule would require disclosure of *each* SSN assigned to an individual, since some individuals have two or more SSNs. The Department believes that disclosure of each SSN is central to protection of HUD programs from fraud, waste, or abuse.

Finally, the Department is concerned that the rule's proposed disclosure and document production requirements not impose special hardships on elderly applicants and participants in programs covered by the rule. The Department specifically requests public comment on this point, including possible measures to ameliorate any undue burdens on the elderly.

2. *Employee Identification Numbers: Entity applicants.* Each entity applicant would be required to disclose the complete and accurate Employer Identification Number(s) assigned to it. As with SSNs, only EINs assigned to the entity would be disclosed, and any EIN assigned would have to be reported.

Disclosure Under the Rule: To Whom and When

The disclosure of SSNs and EINs would be made to the processing entity. For all applicants (both individual and entity), the disclosure would have to be made when the eligibility of the applicant under any of the covered programs is being determined.

Participants who were not subject to the rule's disclosure requirements as applicants (*i.e.*, those who became participants before the effective date of the rule) would have to provide their social security numbers at the first regularly scheduled income reexamination held after the effective date of the final rule in this proceeding.

Participants who were subject to the disclosure requirements as applicants, or as preexisting participants under the preceding paragraph, would have to disclose their social security numbers at subsequent regularly scheduled income reviews only if there has been a change in their circumstances since eligibility was determined or since their last regularly scheduled income review (whichever is later). The following circumstances would necessitate subsequent disclosure:

(i) There has been a change in the family composition of a participant.

(ii) Any member of the household of a participant has been assigned a social security number for the first time (including any member who is six years of age, under the circumstances described above).

(iii) Any member of the household of the participant has obtained a

previously undisclosed social security card.

(iv) Such other circumstances as HUD may prescribe in administrative instructions.

Where there has been a change in the composition of the family, each member of the household would be required to produce social security numbers, even if one or more members have done so previously. In the other two instances, only the individual involved would have to produce the number. These requirements reflect the Department's concern that disclosure be required only where necessary to produce information helpful to its efforts to mitigate abuse in HUD programs.

The exact timing and context of the required disclosure for both applicants and participants would be governed by the specific rules for the program involved. Readers should review the amendments proposed for the individual program regulations subject to this rule for more information.

Required Documentation

The documentation necessary to verify the SSN of an individual who is required to disclose the number would be a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including such substantiation, as HUD may prescribe in administrative instructions. The documentation necessary to verify the EIN of an entity applicant that is required to disclose this number would be the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation, as HUD may prescribe in administrative instructions.

The Department recognizes that it may not be possible for some applicants to produce SSN cards or official EIN designations without considerable effort and expense. Therefore, the Department proposes to prescribe in administrative instructions other classes of evidence (including any required substantiation) that the Department will regard as sufficient to document SSNs and EINs. An example of such evidence for SSNs may include a State driver's license that displays the individual's SSN. The Department may prescribe in administrative instructions that more than one alternate document be required, if the social security card is not provided for inspection.

Any individual who is not required to disclose a SSN because he or she has not been assigned one would have to sign a certification to this fact. This certification would be designed to

discourage applicants and participants from avoiding the rule's disclosure requirements simply by representing that they do not have a number.

Except as discussed in the next section, failure to meet these documentation and certification requirements constitutes grounds for denying eligibility of an applicant, or for terminating assistance or tenancy (or both) of a participant, under the program involved, as described below. This provision tracks the explicit language of section 165 that the required disclosures are a condition of initial or continuing eligibility for the covered programs.

Special Rules for Applicants and Participants in Housing Assistance Programs

If an individual who is an applicant or participant in a housing assistance program listed in 24 CFR Part 200, Subpart T, or Part 750, or any family member of the applicant or participant, cannot produce acceptable evidence of a SSN, the individual (or the individual's parent or guardian, in the case of an individual who is under the age of 18 years) would have to provide the individual's or relevant family member's SSN and execute a certification that the number provided has been assigned to the individual, but that the individual (and, as appropriate, the parent or guardian) cannot produce evidence to verify it. The processing entity would have to accept this certification, and continue processing the applicant or participant for purposes of establishing program eligibility.

In the case of an applicant, if the processing entity determines that the applicant is otherwise eligible for assistance, the applicant may not become a participant until it presents to the processing entity acceptable documentation of its SSN. During this period, the applicant would retain the place it occupied in the covered program following its determination of eligibility, including (as appropriate) its place on any waiting list maintained for the covered program.

In the case of a participant, if the processing entity determines that the participant otherwise continues to be eligible under the covered program, the participant would continue to receive assistance.

An applicant or a participant would have to provide the processing entity with acceptable documentation of the SSN within 60 calendar days of the above certification. Failure to do so would constitute immediate grounds for denying eligibility to the applicant, or terminating the assistance or tenancy

(or both) of the participant, under the covered program.

These special documentation rules would apply only to individuals and families seeking housing assistance, and to those already receiving housing assistance, under a program referred to in 24 CFR Part 200, Subpart T, or Part 750. The provisions reflect the Department's concern that *immediate* denial of initial or continuing eligibility could have extreme effects on these applicants and participants. Applicants could have their ability to obtain timely housing assistance seriously frustrated; participants could lose their housing assistance, and even their tenancy.

The Department believes that these circumstances justify a limited period within which otherwise eligible applicants and participants would be "held in place." For applicants, this would mean that although they could not receive housing assistance immediately, they would retain their place for assistance as though they were determined to be fully eligible; participants would continue to receive assistance. The Department believes that the 60-day period in the proposed rule should be adequate to enable applicants and participants to secure acceptable documentation of their SSNs. As with the certification described earlier for those who have not been assigned a SSN, the certification here is designed to discourage persons from using these special provisions to remain on a waiting list or to continue receiving assistance, even though they may not meet the rule's disclosure requirements.

Rejection of Documentation

The processing entity may reject evidence proffered for a specific SSN or EIN, or a certification provided as to a SSN, even if the evidence is in a class, and the certification is in the form, sanctioned by HUD. The rule would prescribe the circumstances under which such a rejection could take place.

Generally, rejection may occur in the following situations:

1. Upon presentation, if the document or the social security number appears to be false on its face. HUD would include in administrative instructions the circumstances that would instigate such a rejection.
2. During review by the processing entity or HUD, if conflicting information is received as to the validity of the social security number or the identity of the person.
3. During audits, investigations, or other reviews, if the social security number is discovered to be invalid or not issued to the person.

In any of these circumstances, HUD or the processing entity may demand presentation of the person's social security card. Failure or refusal to do so would be grounds for denial or termination of eligibility. Rejection of the evidence would be grounds for immediate denial of initial or continuing eligibility for a program subject to the rule.

Penalties for Failure to Meet Disclosure Requirements

As noted above, section 165 of the 1987 Act provides that its disclosure requirements are a condition of initial and continuing eligibility for any program subject to its provisions. For individual applicants, the rule would provide that the failure to disclose SSNs would be grounds for denial of eligibility for the covered program. For entity applicants, eligibility would be denied if the entity failed to disclose its EIN or if the entity's principals failed to disclose their SSNs.

In the case of participants who fail to disclose SSNs, the processing entity would be required to terminate assistance under the program and, if authorized under the program, would have to terminate the participant's tenancy. Whether termination of tenancy is required depends on the authority involved. In some cases, termination of assistance also requires that the family be evicted from the project (see, for example, the Public and Indian Housing program).

In others, such as the Housing Development Grants program, assistance can be terminated without terminating the participant's tenancy: the participant simply pays an unsubsidized rental. In still others, failure to meet the proposed rule's disclosure requirements not only would result in termination to assistance, but also would specifically be made a substantial violation of the lease for which termination of tenancy is the appropriate remedy (see, for example, the Section 8 New Construction and Substantial Rehabilitation programs, as amended by this proposed rule). Readers should carefully review the program-specific amendments to this rule, as well as existing regulatory and administrative guidance for the existing programs, to determine the effects of the proposed rule.

Implementation

For applicants, the proposed rule would apply to all applicant eligibility determinations initiated on or after the effective date of the rule. For participants, the rule would apply to each scheduled review of participant

income initiated on or after the effective date of the rule, and to each such review conducted thereafter.

Purposes That SSNs and EINs May Serve

The purpose of this rule is to enable the Department to use social security and Employer Identification numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the rule. Specific examples of how the Department may use these numbers include (but are not limited to) the following:

- (1) Identification of a person or entity in manual or automated records.
- (2) Identification of a person or entity during debt collection efforts.
- (3) A cross-check between the Department's automated systems for evidence of a person's or entity's previous or current participation in other programs.
- (4) Identification of a person's or entity's eligibility for, or level or benefits in, the Department's programs based upon its records in other Federal agencies.
- (5) Identification of a person or entity for purposes of requesting information from other government or private sources during an audit or investigation.
- (6) Confirmation of a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

Relation Between Section 165 and Other Federal Requirements

Section 165 of the 1987 Act deals only with the disclosure of SSNs and EINs and provides its own penalty: if applicants and participants fail to meet the regulatory requirements implementing this provision, they will not be eligible under the covered program, either as an applicant seeking initial entry or as a participant seeking continuing eligibility for program participation. Section 165 has no effect on other Federal requirements, or on the availability of other Federal penalties for failure to meet those requirements. Thus, if an applicant or participant deliberately falsifies its SSN or EIN, the Department may deny eligibility for program participation under section 165, as well as impose other Federal penalties for fraud and misrepresentation in applying for participation in a Federal program.

Limitations on the Collection, Maintenance, Use, and Dissemination of SSNs and EINs, and on Information Derived From Them

The collection, maintenance, use, and dissemination of social security and

Employer Identification numbers may be subject to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a. The provisions of the Act apply to records on individual U.S. citizens (or aliens lawfully admitted for permanent residence) that are maintained by HUD in a "system of records" where by information is retrieved by the name of the individual or other identifying number or symbol. Records concerning many individual applicants and participants in the housing programs listed in 24 CFR Part 200, Subparts T and U, Part 501, and Part 750 are maintained in Privacy Act systems of records. (A complete listing of the Department's Privacy Act systems is published in the Federal Register's Privacy Act Issuance: 1986 Compilation.) Records concerning partnerships, corporations, and other similar entities are not governed by the Act.

As noted above, HUD would collect social security and Employer Identification Numbers as a means of identifying individuals and entities that are applicants for, or participants in, HUD programs, and for purposes of ensuring that they are income-eligible for the covered program and that the level of benefits provided is appropriate. The numbers would generally be used to decrease the incidence of fraud, waste, and abuse in HUD programs.

HUD may disclose social security and Employer Identification numbers maintained in Privacy Act systems of records only as permitted by the Act. In general, the numbers may be disclosed outside the agency to facilitate the administration of the program pursuant to which the number was disclosed. Specific permissible routine uses of the numbers are listed in the individual Privacy Act notices for each system of records published by the Federal Register in its Privacy Act Issuances: 1986 Compilation. Requests for numbers not contained in a Privacy Act system of records will be governed by the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The FOIA permits HUD to withhold the numbers of individuals where disclosure would constitute a clearly unwarranted invasion of personal privacy.

For the most part, the Privacy Act applies only to Federal agencies, and does not govern the collection, maintenance, use, or disclosure of information by the processing entity under the program involved, or by other entities or persons. However, the rule would subject this information to all applicable Federal, State, and local laws. State and local laws concerning the protection of personal privacy may

restrict the use of numbers by the processing entity or by other entities and persons. In addition, the Privacy Act requires any Federal, State, or local agency requesting a social security number to inform the individual whether disclosure of the number is mandatory or voluntary, the authority for the collection of the number, and what uses will be made of it.

HUD would not be responsible for the further use of social security or Employer Identification numbers that have been properly disclosed outside the Department. However, the requirements of the Privacy Act are applicable to other Federal agencies that may receive the social security or Employee Identification number from HUD, and that maintain the number in a Privacy Act system or records.

Indian Housing Authorities

For purposes of brevity, this rule encompasses Indian Housing authorized by Title II of the 1937 Act under proposed 24 CFR Part 750, and provides that PHAs include Indian Housing Authorities.

On June 29, 1988, President Reagan signed into law the "Indian Housing Act of 1988" (Pub. L. 100-358), which created a separate charter for Indian Housing under Title II of the 1937 Act. On the same day, the Department published a proposed rule to consolidate all Indian Housing regulations from 24 CFR Chapter IX into a revamped Part 905. When this rule is made final, it will be inserted in the appropriate place in the reconstituted Part 905.

Findings and Certifications

Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel,

Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Major rule. This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would require applicants and participants in certain HUD programs to disclose social security or Employer Identification numbers, as appropriate. The costs of complying with this requirement would be slight.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not (if implemented) have federalism implications and, thus, are not subject to review under the Order. The only entities subject to the rule that are covered by the Order are PHAs and State Housing Finance Agencies in their role as "processing entities." These entities already perform significant functions with respect to HUD assistance applicants and participants, and the additional burden to collect Social Security Numbers under the rule would appear too insubstantial.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Individual applicants and participants, and members of their families, would be required to disclose their Social Security Numbers. This is an insignificant burden for those who have been issued Numbers. For those who may not have Numbers, applicants for, or participants in, HUD assistance programs would be given a reasonable period to obtain an SSN before they would be held ineligible for initial or continuing assistance. This would provide additional protection to lower income families for whom ineligibility or loss of assistance could be most damaging.

Semiannual agenda of regulations. This rule was not listed on the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance. The catalog of Federal Domestic Assistance program numbers are 14.103, 14.112, 14.115, 14.116, 14.117, 14.121, 14.123, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.133, 14.134, 14.135, 14.137, 14.139, 14.151, 14.156, 14.164, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.232, 14.580, 14.850, 14.851, and 14.852.

Information collection requirements. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Virtually all of the sections of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
SSNs/EINs ¹ on Housing Form HUD-92068F, Request for Financial Information (2502-0159).....	203	76,000	1	76,000	* 0.0056	426
SSNs/EINs on Housing Form HUD-9539, Request for Occupied Conveyance (2502-0268).....	203	4,600	8.6	39,600	0.0056	222
SSNs/EINs on Housing Form HUD-50059, Owner's Certification of Compliance (2502-0204).....	215, 221, 236, 290, 750, 880, 881, 883, 884, 885, 886	2,171,256	1	2,171,256	0.0056	12,159
SSNs/EINs on Housing Form HUD-93101 Recertification of Family Income and Composition (2502-0082).....	235	150,000	1.25	187,500	0.0056	1,050

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
SSNs/EINs on Housing Form HUD-2530, Previous Participation Certificate (2502-0118).....	207, 213, 215, 221, 232, 236, 241, 242, 244, 250, 251, 255	9,000	1	9,000	0.0056	50
SSNs/EINs on Housing Forms HUD-92900, -92004G Application for HUD/FHA Insured Mortgage (2502-0059)	200, 201, 203, 205, 213, 221, 234, 235	1,603,334	1	1,603,334	0.0056	8,979
SSNs/EINs on Housing Form HUD-92013, Sec. 202 Application Submission Requirements (2502-0267).....	885	1,300	1	1,300	0.0056	7
SSNs/EINs on Forms HUD-6230, 6243, & 40023, Sec. 312 Loan Program (2506-0076)	501, 510	800	13.1	10,536	0.0056	59
SSNs/EINs from Urban Homesteaders	501, 590	769	1	769	0.0056	4
SSNs/EINs from Families, Individuals, Businesses, & Farms Seeking Relocation Assistance	501, 570	4,332	1	4,332	0.0056	24
SSNs/EINs on Form SF-424 Urban Development Action Grant (2506-0040)	570	2,400	1.6	3,925	0.0056	22
SSNs/EINs on Form HUD-50058, Tenant Data Summary (2577-0083) ..	750, 813, 882, 887, 900, 904, 905, 913, 960	3,500	754	2,640,000	0.0056	14,784
Total Annual Burden						37,786

NOTE:

¹ SSNs/EINs = Social Security Numbers/Employer Identification Numbers.
² 0.0056 hour = 20 seconds.

List of subjects.

24 CFR Part 200

Administrative practice and procedure,
 Claims,
 Housing standards
 Loan programs: housing and community development,
 Mortgage insurance,
 Organization and functions (Government agencies),
 Reporting and recordkeeping requirements,
 Minimum property standards,
 Incorporation by reference.

24 CFR Part 201

Health facilities,
 Historic preservation,
 Home improvement,
 Mobile homes,
 Manufactured homes and lots.

24 CFR Part 203

Home improvement,
 Loan programs: housing and community development,
 Mortgage insurance,
 Solar energy.

24 CFR Part 205

Community facilities,
 Mortgage insurance,
 Land development.

24 CFR Part 207

Mortgage insurance,
 Rental housing,
 Mobil home parks.

24 CFR Part 213

Mortgage insurance,
 Cooperatives.

24 CFR Part 215

Grant programs: housing and community development,
 Rent subsidies.

24 CFR Part 221

Condominiums,
 Low and moderate income housing,
 Mortgage insurance,
 Displaced families,
 Single family housing,
 Projects,
 Cooperatives.

24 CFR Part 232

Fire prevention,
 Health facilities,
 Loan programs: health,
 Loan programs: housing and community development,
 Mortgage insurance,
 Nursing homes,
 Intermediate care facilities.

24 CFR Part 234

Condominiums,
 Mortgage insurance,
 Homeownership,
 Projects,
 Units.

24 CFR Part 235

Condominiums,
 Cooperatives,
 Low and moderate income housing,
 Mortgage insurance,
 Homeownership,

Grant programs: housing and community development.

24 CFR Part 236

Low and moderate income housing,
 Mortgage insurance,
 Rent subsidies,
 Taxes,
 Utilities,
 Projects.

24 CFR Part 241

Energy conservation,
 Mortgage insurance,
 Solar energy,
 Projects.

24 CFR Part 242

Hospitals,
 Mortgage insurance.

24 CFR Part 244

Health facilities,
 Mortgage insurance.

24 CFR Part 247

Low and moderate income housing,
 Public housing,
 Tenant eviction.

24 CFR Part 250

Intergovernmental relations,
 Low and moderate income housing,
 Mortgage insurance.

24 CFR Part 251

Mortgage insurance.
 Coinsurance of multifamily mortgages.

24 CFR Part 255

Mortgage insurance, Coinsurance of mortgages covering existing multifamily properties.

24 CFR Part 290

Mortgage insurance, Low and moderate income housing.

24 CFR Part 501

Certain community development programs, Disclosure of Social Security and Employer Identification Numbers.

24 CFR Part 510

Loan programs: housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs: housing and community development.

24 CFR Part 750

Certain housing assistance programs, Disclosure of Social Security Numbers and Employer Identification Numbers.

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 860

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing, New construction.

24 CFR Part 881

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 883

Grant programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation, Low and moderate income housing.

24 CFR Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 885

Grant programs: housing and community development, Aged, Handicapped, Loan programs: housing and community development, Low and moderate income housing.

24 CFR Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 900

Housing assistance payments: new construction and substantial rehabilitation, Guaranteed/insured loans.

24 CFR Part 904

Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 913

Public housing, Indian housing.

24 CFR Part 960

Public housing.

Accordingly, 24 CFR Parts 200, 201, 203, 205, 207, 213, 215, 221, 232, 234, 235, 236, 241, 242, 244, 247, 250, 251, 255, 290, 501, 510, 570, 590, 750, 813, 880, 881, 882, 883, 884, 885, 886, 900, 904, 905, 913, and 960 would be amended and new 24 CFR Parts 501 and 750 would be added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 would be revised to read as follows:

Authority: Titles I, and II, National Housing Act (12 U.S.C. 1701-1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subparts T and U are also issued under sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); Subpart T is also issued under sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and sec. 203, Housing and Community

Development Amendments of 1978 (12 U.S.C. 1715z-11).

2. Part 200 would be amended by adding new Subparts T and U, to read as follows:

Subpart T—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

Sec.	
200.1001	Summary and purpose.
200.1003	Applicability.
200.1005	Definitions.
200.1010	Disclosure of Social Security and Employer Identification Numbers.
200.1015	Penalties for failing to disclose Social Security and Employer Identification Numbers.
200.1020	Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.
200.1025	Implementation.

Subpart T—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

§ 200.1001 Summary and purpose.

(a) *Summary.* (1) This subpart implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the assisted mortgage and loan insurance and related programs administered by the Department of Housing and Urban Development under Subchapter B of this Chapter. The programs covered by this subpart include the following: Temporary Mortgage Assistance Program (TMAP)/Assignment under Part 203, Subpart C; Occupied Conveyance under Part 203, Subpart C; Rent Supplements under Part 215; management of HUD-acquired multifamily properties under Part 290; and the rental and homeownership assistance programs under sections 221(d)(3)(BMR), 235, and 236 of the National Housing Act.

(2) This subpart requires applicants seeking to participate as private owners in certain programs that are subject to this part to disclose their Employer Identification Numbers. Applicants seeking to receive, and certain recipients of, housing assistance under any of the programs covered by this part, as well as certain officials of prospective private owners, must disclose their social security numbers. The failure of any person or entity to make the required disclosures constitutes grounds for denial of

eligibility, or termination of assistance or tenancy (or both), for the program involved.

(3) Section 165 is implemented for the unassisted mortgage and loan insurance and coinsurance programs administered by the Department under Subchapter B of this Chapter, at Part 200, Subpart U. The provision is implemented for the majority of the housing assistance programs administered by the Department under 24 CFR Chapters VIII and IX, at 24 CFR Part 750, and for certain of the Department's community and neighborhood development programs, at 24 CFR Part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use social security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the subpart. Specific examples of how the Department may use social security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for a person's or entity's previous or current participation in other programs.

(4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on the person's or entity's eligibility for, or level of benefits in, the Department's programs.

(5) Identifying a person or entity for the purpose of requesting information about the person or entity from other government or private sources during an audit or investigation.

(6) Validating a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the program involved and that the level of benefits provided is appropriate.

§ 200.1003 Applicability.

This subpart applies to the following housing assistance programs contained in Subchapter B of this chapter:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD.*

(b) *Part 203, Subpart C, Occupied Conveyance.*

(c) *Part 215, Rent Supplement Payments.*

(d) *Part 221, Low Cost and Moderate Income Mortgage Insurance (BMIR).*

(e) *Part 235, Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation.*

(f) *Part 236, Mortgage Insurance and Interest Reduction Payments for Rental Projects.*

(g) *Part 290, Management and Disposition of HUD-Owned Multifamily Housing Projects.*

§ 200.1005 Definitions

As used in this subpart:

Applicant means an individual applicant or an entity applicant.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen as follows: 00-0000000.

Entity applicant means a partnership, corporation, or any other association or entity, either non-profit or for-profit, that seeks to participate as a private owner in 24 CFR Part 215, 221 (BMIR), or 236. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or Department means the United States Department of Housing and Urban Development.

Individual Applicant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD:* A mortgagor who seeks TMAP or Assignment assistance.

(b) *Part 203, Subpart C, Occupied Conveyance:* An occupant who wishes to occupy a property after HUD has acquired it.

(c) *Parts 215, 221(BMIR), and 236:*

(i) An applicant for assistance under any of the covered programs; or

(ii) An individual who seeks to participate in any of the covered programs as a private owner.

(d) *Part 235:* A homeowner or cooperative member seeking homeownership assistance.

(e) *Part 290:* An applicant for assistance.

Participant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignments of Mortgages to HUD:* A mortgagor who is receiving TMAP or whose mortgage has been assigned to HUD.

(b) *Part 203, Subpart C, Occupied Conveyance:* An occupant who occupies a property after HUD has acquired it.

(c) *Parts 215, 221(BMIR), 236, and 290:* A tenant or a qualified tenant under any of the covered programs.

(d) *Part 235:* A homeowner or a cooperative member receiving homeownership assistance.

PHA means a State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage or assist in the development or operation of housing for lower income families. PHA includes Indian Housing Authorities.

Processing entity means HUD or such other person or entity that is responsible for making eligibility determinations and scheduled income reviews under any of the programs referred to in § 200.1003.

Scheduled income review has the following meaning for the programs referred to in § 200.1003:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignments of Mortgages to HUD:* The review of the monthly payment due from the mortgagor under the assistance agreement, as provided by § 203.643(c) (TMAP) and § 203.648(c) (Assignment).

(b) *Parts 215, 221(BMIR), 235, and 236:* The regularly scheduled reexamination of participant income.

(c) *Part 290:* Income certification as provided by § 290.17(e).

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earning that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1010 Disclosure of Social Security and Employer Identification Numbers.

(a) *Required disclosure: individual applicants, participants, and certain officials of entity applicants.* (1) The following individuals must disclose the complete and accurate social security number(s) that have been assigned to them.

(i) Each individual applicant under a program referred to in § 200.1003, including each member of the applicant's household (other than a member of the household of an applicant who seeks to participate as a private owner in the covered program).

(ii) Each participant in a program referred to in § 200.1003, including each member of the participant's household.

(iii) Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant under a program referred to in § 200.1003, as HUD may specify in administrative instructions.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

(i) Is under the age of six years (18 years in the Section 235 program); or

(ii) Has not been assigned a SSN.

(b) *Required disclosure: entity applicants.* Each entity applicant under the programs referred to in § 200.1003 must disclose the complete and accurate Employer Identification Number(s) that have been assigned to it.

(c) *Disclosure: To whom and when.* (1) *Disclosure to the processing entity.* The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity.

(2) *Disclosure by applicants.* Applicants must make the disclosure referred to in paragraph (a) or (b) of this section (as appropriate), when their eligibility under a program referred to in § 200.1003 is being determined.

(3) *Initial disclosure by those who were participants before [Insert the effective date of this rule].* If the participant's initial eligibility for a program referred to in § 200.1003 was initiated before [insert the effective date of this rule], the disclosure referred to in paragraph (a) of this section must be made at the next regularly scheduled income reexamination.

(4) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has made the initial disclosure referred to in paragraph (c)(2) (as an applicant) or paragraph (c)(3) (as a preexisting participant) of this section, subsequent disclosures are not required, unless one of the following circumstances has occurred since the participant's eligibility under the program was determined, or since the last regularly scheduled reexamination of income (whichever was later), in which case the participant must make the disclosure required by paragraph (c)(5) of this section:

(i) There has been a change in the composition of the participant's family.

(ii) Any member of the participant's household has been assigned a SSN for the first time (including any member who is six years of age and has been assigned a SSN, as required by section

6109(e) of the Internal Revenue Code of 1986).

(iii) Any member of the participant's household has obtained a previously undisclosed SSN card.

(iv) Such other circumstances as HUD may prescribe in administrative instructions.

(5)(i) In the circumstances described in paragraph (c)(4)(i) of this section, the participant must make the disclosure referred to in paragraph (a) of this section at the next regularly scheduled reexamination of income.

(ii) In the circumstances described in paragraph (c)(4)(ii) or (iii) of this section, only the household member or members who meet the requirements of either of those paragraphs must make the disclosure referred to in paragraph (a) of this section, at the next regularly scheduled reexamination of income.

(d) *Required documentation—(1) Social Security Number(s).* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) or (c) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN as HUD may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer Identification Number(s).* The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation as HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify that he or she has not been assigned a SSN.

(4) Except as provided by paragraph (e) of this section, failure to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of an applicant, or terminating the assistance or the tenancy (or both) of a participant, under any program referred to in § 200.1003, as provided by § 200.1015.

(e) *Special documentation rules for individual applicants and participants.*

(1) If an individual applicant (other than

an applicant who seeks to participate as a private owner) or a participant (or any household member of the individual applicant or participant) who is required to disclose a SSN under paragraph (a) or (c) of this section cannot produce evidence of the SSN that is acceptable under paragraph (d)(1) of this section, the individual (or the individual's parent or guardian, in the case of an individual who is under the age of 18 years) must provide the individual's SSN and certify that the number provided has been assigned to the individual, but that the individual (and, as appropriate, the parent or guardian) cannot produce evidence to verify the number.

(2) The processing entity must accept the certification referred to in paragraph (e)(1) of this section, and continue to process the individual applicant's or participant's eligibility to participate in the program.

(3) *Individual applicants.* If the processing entity determines that the individual applicant is otherwise eligible for assistance, the individual applicant may not become a participant in a covered program unless it presents to the processing entity the documentation required under paragraph (d)(1), and within the time period specified in paragraph (e)(5), of this section. During such period, the individual applicant will retain the position that is occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the covered program.

(4) *Participants.* If the processing entity determines that the participant otherwise continues to be eligible under the covered program, the participant will continue to participate in the program provided that it presents to the processing entity the documentation required under paragraph (d)(1), within the time period specified in paragraph (e)(5), of this section.

(5) An individual applicant or a participant under this paragraph (e) must provide the processing entity with the documentation required under paragraph (d)(1) of this section within 60 calendar days of the certification in paragraph (e)(1) of this section. Failure to do so constitutes grounds for denying eligibility to an individual applicant or terminating the assistance or tenancy (or both) of a participant, under any program referred to in § 200.1003, as provided by § 200.1015.

(f) *Rejection of documentation.* (1) The processing entity may reject evidence referred to in paragraph (d)(1) or (2) of this section, or a certification provided under paragraph (e)(1) of this section,

only for such reasons as HUD may prescribe in administrative instructions.

(2) Rejection of documentation under paragraph (f)(1) of this section will, as provided in HUD administrative instructions, constitute grounds for denying eligibility to an applicant, or terminating assistance or tenancy (or both) for a participant, under any program referred to in § 200.1003, as provided by § 200.1015.

(g) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR Chapter III, (see in particular, Part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(h) *Form and manner of certifications.* The certifications referred to in paragraphs (d)(3) and (e)(1) of this section must be in the form and manner prescribed by HUD.

§ 200.1015 Penalties for failing to disclose Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 200.1003, if the individual applicant, or any member of the individual applicant's household, does not meet the SSN disclosure requirements specified in § 200.1010.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 200.1003, if:

(1) The entity applicant does not meet the EIN disclosure requirements specified in § 200.1010; or

(2) Any of the officials of the entity applicant referred to in § 200.1010(a)(1)(ii) does not meet the SSN disclosure requirements specified in § 200.1010.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance, and (as appropriate) the tenancy of a participant, under any of the programs referred to in § 200.1003, if the participant, or any member of the participant's household, does not meet the SSN disclosure requirements specified in § 200.1010.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1003 for further information on the use of SSNs

and EINs in determining the eligibility of applicants, and the continued eligibility of participants.

§ 200.1020 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived from them, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

§ 200.1025 Implementation.

(a) *Applicants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1003, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

(b) *Participants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs for participants in the regulations governing the programs referred to in § 200.1003, apply to:

(1) Each scheduled income review of a participant initiated by the processing entity on or after [insert effective date of this rule]; and

(2) Each such review conducted thereafter.

Subpart U—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

Sec.

200.1101 Summary and purpose.

200.1103 Applicability.

200.1105 Definitions.

200.1110 Disclosure of Social Security and Employer Identification Numbers.

200.1115 Penalties for failing to disclose Social Security and Employer Identification Numbers.

200.1120 Limitations on the collection, maintenance use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

200.1125 Implementation.

Subpart U—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

§ 200.1101 Summary and purpose.

(a) *Summary.* (1) This subpart implements section 165 of the Housing

and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the unassisted loan and mortgage insurance and coinsurance programs administered by the Department of Housing and Urban Development under Subchapter B of this Chapter. The programs covered by this subpart include the Department's unassisted home mortgage and multifamily mortgage insuring and coinsuring authorities under the National Housing Act, as well as the property improvement and manufactured home loan program under Title I of the Act and mortgage insurance for nursing homes and related facilities, hospitals, group practice facilities, and land development under sections 232 and 242, and Titles XI and X, respectively, of the Act.

(2) This subpart requires corporate and other entity applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart to disclose their Employer Identification Numbers. Individual applicants that seek HUD-insured financing under any of the programs covered by this subpart, as well as certain officials of prospective corporate and other entity owners, must disclose their social security numbers. The failure of any person or entity to make the required disclosures constitutes grounds for denial of eligibility for HUD mortgage or loan insurance or coinsurance under the covered program.

(3) Section 165 is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under Subchapter B of this Chapter, at Part 200, Subpart T. The provision is implemented for most of the housing assistance programs administered by the Department under 24 CFR Chapters VIII and IX, at 24 CFR Part 750, and for certain of the Department's community and neighborhood development programs, at 24 CFR Part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use social security and Employer Identification numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the subpart. Specific examples of how the Department may use social security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for a

person's or entity's previous or current participation in other programs.

(4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on the person's or entity's eligibility for, or level of benefits in, the Department's programs.

(5) Identifying a person or entity for the purpose of requesting information from other government or private sources during audit or investigation.

(6) Confirming a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided is appropriate.

§ 200.1103 Applicability.

This subpart applies to all mortgage and loan insurance and coinsurance programs contained in Subchapter B of this chapter, except the mortgage insurance and related programs referred to in § 200.1003.

§ 200.1105 Definitions.

As used in this subpart:

Assume an existing mortgage or loan means any assumption of a mortgage or loan that is insured or coinsured under any of the programs referred to in § 200.1103, irrespective of whether the assumption involves the release by the mortgagee of a previous mortgagor from personal liability on the mortgage note and the assumption of this liability, and the agreement to pay the mortgage debt, by the mortgagor.

Applicant means any mortgagor or borrower, or co-mortgagor or co-borrower that applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103, or that seeks to assume an existing mortgage or loan insured or coinsured under any of these programs. The term does not include:

- (a) A public entity (such as a PHA or a State Housing Financing Agency), or an Indian Tribe.
- (b) A mortgagee or lender.
- (c) Any member of the applicant's household who will not be obligated to pay the debt evidenced by the mortgage or loan documents.
- (d) A person whose only involvement with an application for mortgage or loan insurance or coinsurance, or an assumption of an insured or coinsured mortgage or loan, is in his or her official capacity with a public entity or an Indian Tribe, or an official of a mortgagee or lender.

The term encompasses both an individual applicant and an entity applicant.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

Entity applicant means an applicant that applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103, other than an individual applicant. Examples of an entity applicant include applicants that intend to hold the mortgaged property as a partnership, corporation, or any other association or entity.

HUD or Department means the United States Department of Housing and Urban Development.

Individual applicant means an individual or individuals who:

- (a)(i) Apply for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103, or
- (ii) Seek to assume an existing mortgage or loan insured or coinsured under any of such programs, and
- (b) Intend to hold the mortgaged property in their individual right.

PHA means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility determinations for:

- (a) The insurance or coinsurance of mortgages or loans under any of the programs referred to in § 200.1103, or
- (b) The assumption of existing insured or coinsured mortgages under any of such programs.

The processing entity is specified in the regulations governing the covered program, and may include (but is not limited to): HUD, an FHA-approved mortgagee or lender under 24 CFR Part 202 or 24 CFR 203.1 through 203.7, a mortgagee under the Direct Endorsement program (§ 200.163) or a lender under a coinsurance authority (Part 204, 250, 251, or 255).

Social Security Number (SSN) means the number that is assigned to an individual by the Social Security Administration of the Department of Health and Human Services, and that

identifies the record of the individual's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1110 Disclosure of Social Security Numbers and Employer Identification Numbers.

(a) *Required disclosure: individual applicants, and certain officials of entity applicants.* (1)(i) Each individual applicant under the programs referred to in § 200.1103 must disclose the complete and accurate social security number(s) that have been assigned to such person.

(ii) Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant under the programs referred to in § 200.1103, as HUD may specify in administrative instructions, must disclose the complete and accurate social security number(s) that have been assigned to such person.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

- (i) Is under the age of six years; or
- (ii) Has not been assigned a SSN.

(b) *Required disclosure: entity applicants.* Each entity applicant under the programs referred to in § 200.1103 must disclose the complete and accurate number for any Employer Identification Number(s) that have been assigned to it.

(c) *Disclosure: To whom and when?* The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity when the eligibility of the applicant under any of the programs referred to in § 200.1103 is being determined.

(d) *Required documentation.* (1) The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN, as HUD may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the

official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation, as HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify (in a form and manner prescribed by HUD) that he or she has not been assigned a SSN.

(4) Failure to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of an applicant under any program referred to in § 200.1103, as provided by § 200.1115.

(e) *Rejection of documentation.* (1) The processing entity may reject the evidence referred to in paragraph (d)(1) or (2) of this section, or a certification under paragraph (d)(3) of this section, only for such reasons as HUD may prescribe in administrative instructions.

(2) Rejection of the documentation referred to in paragraph (e)(1) of this section will, as provided in HUD administrative instructions, be grounds for denying eligibility to an applicant, under any program referred to in § 200.1103, as provided by § 200.1115.

(f) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the regulations for the Social Security Administration at 20 CFR Chapter III, especially Part 422.

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

§ 200.1115 Penalties for failing to disclose Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 200.1103, if the individual applicant does not meet the SSN disclosure requirements specified in § 200.1110.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 200.1103, if:

(1) The entity applicant does not meet the EIN disclosure requirements specified in § 200.1110; or

(2) Any of the officials of the entity applicant referred to in § 200.1110(a)(1)(ii) does not meet the

SSN disclosure requirements specified in § 200.1110.

(c) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1103 for further information on the use of SSNs and EINs in determining the eligibility of applicants under these programs.

§ 200.1120 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and of information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

§ 200.1125 Implementation.

The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1103, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for Part 201 would continue to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Part 201, Subpart C, would be amended by adding a new § 201.22a, to read as follows:

§ 201.22a Disclosure of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this part, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this Chapter.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

5. The authority citation for Part 203 would continue to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

6. Part 203, Subpart A, would be amended by adding a new § 203.35, to read as follows:

§ 203.35 Disclosure of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

7. In § 203.650, a new paragraph (a)(7) would be added, to read as follows:

§ 203.650 Assignment of mortgages.

(a) * * *

(7) The mortgagor discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

8. In § 203.664, a new paragraph (a)(1)(vi) would be added, to read as follows:

§ 203.664 Forbearance relief on Indian Land insured pursuant to section 248 of the National Housing Act.

(a) * * *

(i) * * *

(vi) The mortgagor discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

* * * * *

9. In § 203.674, new paragraphs (a)(5) and (b)(6) would be added, to read as follows:

§ 203.674 Eligibility for continued occupancy.

(a) * * *

(5) The occupant discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

(b) * * *

(6) The occupant discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

* * * * *

10. In § 203.677, a new paragraph (e) would be added, to read as follows:

§ 203.677 Decision to approve or deny a request.

(e) * * *

(e) Notwithstanding the other provisions of this section, Part 200, Subpart T, of this chapter governs a decision to deny a request based on the failure of an occupant to disclose its social security number, as provided by that Part.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

11. The authority citation for Part 205 would be revised to read as follows:

Authority: Sec. 1010, National Housing Act (12 U.S.C. 1749j); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. § 205.30, a new paragraph (c) would be added, to read as follows:

§ 205.30 Eligible mortgagors.

(c) To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

13. The authority citation for Part 207 would continue to read as follows:

Authority: Secs. 207 and 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

14. Part 207, Subpart A, would be amended by adding a new § 207.17a, to read as follows:

§ 207.17a Disclosure of social security and employer identification numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

15. The authority citation for Part 213 would continue to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

16. In § 213.20, a new paragraph (c) would be added, to read as follows:

§ 213.20 Eligibility of mortgagors.

(c) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

17. Part 213, Subpart C, would be amended by adding a new § 213.522a, to read as follows:

§ 213.522a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 215—RENT SUPPLEMENT PAYMENTS

18. The authority citation for 24 CFR Part 215 would continue to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. In § 215.15, a new paragraph (d) would be added to read as follows:

§ 215.15 Eligible housing owner.

(d) To be eligible to receive rent supplement payments, the housing owner must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart T, of this chapter.

20. In § 215.20, a new paragraph (b)(2) would be added to read as follows:

§ 215.20 Qualified tenant.

(b) * * *

(2) For requirements covering the disclosure of social security numbers by individuals and families, see Part 200, Subpart T, of this chapter.

21. In § 215.55, paragraphs (a) and (c) would be revised to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with § 215.45 and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Rent Supplement payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the individual or family to disclose social security numbers, as provided by Part 200, Subpart T of this chapter.

(c) *Termination of assistance.* A Qualified Tenant's eligibility for Rent Supplement Payments continues until the Total Tenant Payment equals the Gross Rent. The rent charged at that point may not exceed the market rent approved by the Secretary. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the contract. However, assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. Eligibility for assistance must be terminated, if the Qualified Tenant fails to disclose social security numbers, as provided by Part 200, Subpart T of this chapter.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

22. The authority citation for part 221 would be revised to read as follows:

Authority: Secs. 211, 221 National Housing Act (12 U.S.C. 1715b, 1715f); section 221.544(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

23. Part 221, Subpart A, would be amended by adding new § 221.57, to read as follows:

§ 221.57 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

23a. Part 221, Subpart C, would be amended by adding a new § 221.510a to read as follows:

§ 221.510a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

24. In § 221.537, a new paragraph (e) would be added, to read as follows:

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

(e) *Disclosure of social security numbers.* Upon determining an individual's or family's eligibility for initial occupancy under paragraph (a) of

this section, and at any subsequent reexamination of a tenant's income for continued occupancy under paragraph (b) of this section, the mortgagor must require the individual or family, or the tenant (as appropriate), to disclose social security numbers, as provided by Part 200, Subpart T, of this chapter. Failure of the individual or family, or the tenant (as appropriate), to make such disclosure will constitute grounds for denying eligibility for initial occupancy, or for terminating the tenancy, in accordance with the Commissioner's administrative instructions and § 200.1015.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

25. The authority citation for Part 232 would be revised to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. Part 232, Subpart A, would be amended by adding new § 232.20a to read as follows:

§ 232.20a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

26a. Part 232, Subpart C, would be amended by adding a new § 232.615a to read as follows:

§ 232.615a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

27. The authority citation for Part 234 would be revised to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); section 234.520(a)(2)(ii) is also insured under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

28. Part 234, Subpart A, would be amended by adding a new section, to read as follows:

§ 234.58 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

29. The authority citation for Part 235 would be revised to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 235.1 [Amended]

30. In § 235.1, paragraph (a) would be amended to add § 203.35 to the listing of sections.

31. In § 235.10, a new paragraph (e) would be added to read as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(e) To be eligible under this part, the mortgagor or cooperative member must meet the requirements for the disclosure of social security numbers, as provided by Part 200, Subpart T, of this chapter.

32. In § 235.350, a new paragraph (d) would be added, to read as follows:

§ 235.350 Mortgagor's required recertification.

* * * * *

(d) The homeowner must disclose its social security number in connection with any recertification under this section, to the extent and in the manner specified in Part 200, Subpart T, of this chapter.

33. In § 235.375, paragraphs (b) (4) and (e) would be revised to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payment contract.

* * * * *

(b) * * *

(4) The mortgagee is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition, and (if required) a disclosure of its social security number, as prescribed in § 235.350.

* * * * *

(e) *Reinstatement.* Where the assistance payments contract is suspended, it may be reinstated by the Secretary at the Secretary's discretion and on such conditions as the Secretary

may prescribe. To be eligible for reinstatement under this section, the mortgagor or cooperative member must meet the requirements for the disclosure of social security numbers, as provided by Part 200, Subpart T, of this chapter.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

34. The authority citation for part 236 would be revised to read as follows:

Authority: Secs. 211, National Housing Act (12 U.S.C. 1715b, 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. Part 236, Subpart A, would be amended by adding a new § 236.11, to read as follows:

§ 236.11 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart T, of this chapter.

36. In § 236.70, paragraph (a)(1) would be revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In the processing of applications for admission, the housing owner will determine eligibility following procedures prescribed by the Commissioner, including those specified for the disclosure of social security numbers in Part 200, Subpart T, of this chapter.

* * * * *

37. In § 236.80, paragraphs (a) and (c) would be revised to read as follows:

§ 236.80 Reexamination of income.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) in accordance with § 236.55 or § 236.735, and determine whether the Qualified Tenant's unit size is still appropriate. The Owner must adjust Tenant Rent and the Rental Assistance Payment, if applicable, to reflect any change in Total Tenant Payment, and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose

social security numbers, as provided by Part 200, Subpart T, of this chapter.

(c) *Termination of assistance.* A Qualified Tenant loses eligibility for assistance when the Tenant Rent (Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) equals the Basic Rent (Gross Rent for RAP tenants). The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance or eligibility to pay below Market Rent also may be terminated in accordance with any requirements of the lease or with HUD requirements. Eligibility for assistance must be terminated if the Qualified Tenant fails to disclose social security numbers, as provided by Part 200, Subpart T, of this chapter.

38. Section 236.710 would be revised to read as follows:

§ 236.710 Qualified tenant.

The benefits of rental assistance payments are available only to an individual or a family renting a dwelling unit in a project that is subject to a contract under this Subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of Subpart A. In order to receive rental assistance under this Subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in Subpart A. For requirements concerning the disclosure of social security numbers, see Part 200, Subpart T, of this chapter.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

39. The authority citation for Part 241 would continue to read as follows:

Authority: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z-6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

40. Part 241, Subpart A, would be amended by adding a new § 241.11, to read as follows:

§ 241.11 Disclosure of social security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

41. Part 241, Subpart C, would be amended by adding a new section 241.626, to read as follows:

§ 241.626 Disclosure of social security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

42. The authority citation for Part 242 would continue to read as follows:

Authority: Secs. 211, 233(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

43. Part 242, Subpart A, would be amended by adding a new § 242.24, to read as follows:

§ 242.24 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES—[TITLE XI]

44. The authority citation for Part 244 would continue to read as follows:

Authority: Secs. 211, 1104, National Housing Act (12 U.S.C. 1715b, 1749aaa-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. Section 244.20 would be revised to read as follows:

§ 244.20 Eligible mortgagors.

In order to be eligible as a mortgagor under this subpart, the applicant must:

(a) Establish to the satisfaction of the Commissioner that it qualifies as a group practice unit, as that term is defined in § 244.1(c); and

(b) Meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

46. The authority citation for Part 247 would be revised to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); secs. 211, 221, 236, National Housing Act (12 U.S.C. 1715b, 1715f, 1715z-1); sec. 202, Housing Act of 1959 (12 U.S.C. 1701g); secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

47. In § 247.3, paragraph (c) would be revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(c) *Material noncompliance.* (1) The term "material noncompliance with the rental agreement" includes:

(i) One or more substantial violations of the rental agreement; or

(ii) Repeated minor violations of the rental agreement that disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project, or have an adverse financial effect on the project.

(2) Failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including failure to disclose social security numbers, as provided by 24 CFR Part 200, Subpart T, or 24 CFR Part 750 (as appropriate)) or knowingly providing incomplete or inaccurate information will constitute a substantial violation of the rental agreement.

(3) The payment of rent or any other financial obligation due under the rental agreement after the due date, but within the grace period permitted under State law, constitutes a minor violation.

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

48. The authority citation for Part 250 would be revised to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

49. Part 250, Subpart B, would be revised by adding a new section, to read as follows:

§ 250.112a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

50. The authority citation for Part 251 would continue to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z-9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

51. Part 251, Subpart C, would be amended by adding a new § 251.202a, to read as follows:

§ 251.202a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

52. The authority citation for Part 251 would continue to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

53. Part 255, Subpart C would be amended by adding a new § 255.202a to read as follows:

§ 255.202a Disclosure of social security and Employer Identification Numbers.

To be eligible for coinsurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

54. The authority citation for Part 290 would be revised to read as follows:

Authority: Secs. 202, 203, 204, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1b, 1701z-11, 1701z-12); secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of

Housing and Urban Development Act (42 U.S.C. 3535(d)).

55. In § 290.17, a new paragraph (g) would be added, to read as follows:

§ 290.17 Rental rates.

(g) *Disclosure of social security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure of social security numbers, as provided by Part 200, Subpart T, of this chapter.

56. 24 CFR, Chapter V, would be amended by adding a new Part 501, to read as follows:

PART 501—DISCLOSURE OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS IN CERTAIN COMMUNITY DEVELOPMENT AUTHORITIES

Sec.

501.1 Summary and purpose.

501.3 Applicability.

501.5 Definitions.

501.10 Disclosure of social security and Employer Identification Numbers.

501.15 Penalties for failing to disclose social security and Employer Identification Numbers.

501.20 Limitations on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.

501.25 Implementation.

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); sec. 312, Housing Act of 1964 (42 U.S.C. 1452b); Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 810, Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 501.1 Summary and purpose.

(a) *Summary.* (1) This part implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to applicants under certain community and neighborhood development authorities administered by the Department of Housing and Urban Development. This part applies to borrowers under the Rehabilitation Loan program (Part 510 of this chapter); individuals, families, and entities seeking relocation payments and assistance under the Community Development Block Grant (CDBG) program (Part 570 of this chapter); private participating parties under the Urban Development Action Grant (UDAG) program (Part 570, Subpart G,

of this chapter); and homesteaders under the Urban Homesteading program (Part of this chapter).

(2) This part requires corporate and other entities to disclose their Employer Identification Numbers as a condition to obtaining rehabilitation loans under the Rehabilitation Loan program, or relocation payments and assistance under the CDBG program, and those seeking to participate in the UDAG program. Individuals seeking assistance under any of the programs covered by this subpart, as well as certain officials of corporate and other entities, must disclose their social security numbers. The failure of any person or entity to make the required disclosures constitutes grounds for denial of eligibility or for termination of participation in the covered program.

(3) Section 165 is implemented for the assisted and unassisted mortgage and loan insurance and coinsurance and related programs administered by the Department under 24 CFR Chapter II, Subchapter B at Part 200, Subparts T and U, respectively. The provision is implemented at 24 CFR Part 750 for most of the housing assistance programs administered by the Department under 24 CFR Chapters VIII and IX.

(b) *Purpose.* The purpose of this part is to enable the Department to use social security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the subpart. Specific examples of how the Department may use social security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for previous or current participation in other programs.

(4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying a person or entity for the purpose of requesting information about the person or entity from other government or private sources during audit or investigation.

(6) Validating a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided is appropriate.

§ 501.3 Applicability.

This part applies to the Rehabilitation Loan program (Part 510 of this Chapter), the CDBG program (Part 570 of this chapter), the UDAG program (Part 570, Subpart G, of this chapter), and the Urban Homesteading program (Part 590 of this chapter).

§ 501.5 Definitions.

As used in this subpart:

Applicant means:

(a) A borrower under the Rehabilitation Loan Program (Part 510).

(b) An individual, family, business, non-profit organization, or farm operation seeking relocation payments and assistance under the CDBG program (24 CFR 570.202(i)).

(c) A private participating party under the UDAG program (Part 570, Subpart G).

(d) A homesteader under the Urban Homesteading program (Part 590).

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen as follows: 00-0000000.

Entity applicant means an applicant, other than an individual applicant.

Examples of an entity applicant include applicants that seek to participate or to obtain assistance under any program referred to in § 501.3, as a partnership, corporation, or any other association or entity.

HUD or Department means the United States Department of Housing and Urban Development.

Individual Applicant means an applicant that is an individual or a family and that seeks to participate or to obtain assistance under program referred to in § 501.3, in his or her individual right.

Processing entity means the person or entity responsible for determining the eligibility of applicants that seek to participate or to obtain assistance under any of the programs referred to in § 501.3.

Social security number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to

identify an auxiliary beneficiary under the Social Security System.

§ 501.10 Disclosure of social security and Employer Identification Numbers

(a) **Required disclosure: individual applicants, participants, and certain officials of entity applicants.** (1)(i) Each individual applicant (including each member of the household of the individual applicant) under the programs referred to in § 501.3, must disclose the complete and accurate social security number(s) that have been assigned to such person.

(ii) Each officer, director, principal stockholder, or other official of an entity applicant (as HUD may specify in administrative instructions) under the programs referred to in § 501.3 must disclose the complete and accurate number for any social security number(s) that have been assigned to such person.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

(i) Is under the age of six years; or

(ii) Has not been assigned a SSN.

(b) **Required disclosure: entity applicants.** Each entity applicant under the programs referred to in § 501.3 must disclose the complete and accurate Employer Identification number(s) that have been assigned to it.

(c) **Disclosure: to whom and when?** The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity when the applicant's eligibility under any of the programs referred to in § 501.3 is being determined.

(d) **Required documentation—(1) Social security number(s).** The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN, as HUD may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) **Employer identification number(s).** The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation as

HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify (in a form and manner prescribed by HUD) that he or she has not been assigned a SSN.

(4) Failure of the applicant to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of the applicant under any program referred to in § 501.3, as provided by § 501.15.

(e) **Rejection of documentation.** (1) The processing entity may reject evidence referred to in paragraph (d) (1) or (2) of this section, or a certification provided under paragraph (d)(3) of this section, only for such reasons as HUD may prescribe in administrative instructions.

(2) Rejection of documentation under paragraph (e)(1) of this section will, as provided in HUD administrative instructions, constitute grounds for denying eligibility to an applicant, under any program referred to in § 501.3, as provided by § 501.15.

(f) **Information on SSNs and EINs.** (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR Chapter III, (see in particular Part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

§ 501.15 Penalties for failing to disclose social security and Employer Identification Numbers.

(a) **Denial of eligibility: individual applicants.** The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 501.3, if the individual applicant, or any member of the individual applicant's household does not meet the SSN disclosure requirements specified in § 501.10.

(b) **Denial of eligibility: entity applicants.** The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 501.3, if:

(1) The entity applicant does not meet the EIN disclosure requirements specified in § 501.10; or

(2) Any of the officials of the entity applicant referred to in § 501.10(a)(1)(ii) does not meet the SSN disclosure requirements specified in § 501.10.

(c) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 501.3 for further information on the use of SSNs and EINs in determining the eligibility of applicants.

§ 501.20. *Limitations on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.*

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this part, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

§ 501.25 Implementation.

The provisions of this part, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 501.3, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

57. The authority citation for Part 510 would continue to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

58. Part 510 would be amended by adding a new § 510.106 to read as follows:

§ 510.106 Disclosure of social security and Employer Identification Numbers.

To be eligible for a loan under this part, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 501 of this chapter.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

59. The authority citation for Part 570 would continue revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

60. In § 570.201, paragraph (i) would be revised to read as follows:

§ 570.201 Basic eligible activities.

(i) *Relocation.* Relocation payments and assistance for permanently or temporarily displaced individuals, families, businesses, nonprofit organizations, and farm operations where: (1) Required under the provisions of § 570.606(a); and (2) relocation payments and assistance are determined by the recipient to be appropriate as provided in § 570.606(b). To be eligible for payments and assistance under this paragraph (i), the individual, family, or entity must meet the requirements for the disclosure of social security and Employer Identification Numbers, in accordance with Part 501 of this Chapter, and HUD administrative instructions.

61. In § 570.458, paragraph (c)(2) would be revised to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(2) A description of the project to be undertaken, how the property involved is controlled, and the nature of the project. The applicant must substantiate the market and economic feasibility of the proposed project, must analyze the economic benefits which the activities are expected to produce, and must show how the proposed activities will take advantage of unique opportunities to attract private investment. The applicant must identify the public and private participating parties in the proposed project; clarify the relationship of each to the request for action grant funds; and submit participating parties' social security and Employer Identification Numbers, as provided by Part 501 of this chapter. Information provided shall include proposed cost and methods of financing. Failure to submit social security and Employer Identification Numbers as required by Part 501 will render the application ineligible for assistance under this subpart.

PART 590—URBAN HOMESTEADING

62. The authority citation for Part 590 would be revised to read as follows:

Authority: Sec. 810, Housing and Community Development Act of 1974 (12 U.S.C. 1706e); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

63. In § 590.11, a new paragraph (d)(11) would be added, to read as follows:

§ 590.11 Applications.

* * * * *

(d) *Certification.* * * *

(11) The applicant and its designated public agency will require homesteaders

to disclose their social security numbers, as provided by Part 501 of this chapter.

64. 24 CFR Chapter VII would be amended by adding a new Part 750, to read as follows:

PART 750—DISCLOSURE OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

Subpart A—General

Sec.

§ 750.1 Summary and purpose.

§ 750.3 Applicability.

§ 750.5 Definitions.

Subpart B—Disclosure of Social Security and Employer Identification Numbers

§ 750.10 Disclosure of social security and employer identification numbers.

§ 750.15 Penalties for failing to disclose social security and Employer Identification Numbers.

§ 750.20 Limitation on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.

Subpart C—Implementation

§ 750.25 Implementation.

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o; 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 750.1 Summary and purpose.

(a) *Summary.* (1) This part implements Section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to most of the housing assistance programs administered by the Department of Housing and Urban Development under 24 CFR Chapters VIII and IX. The programs covered by this part are the Section 8 Housing Assistance Payments program and the Public and Indian Housing program.

(2) This part requires applicants that seek to participate as private owners in certain programs that are subject to this part to disclose their Employer Identification Number(s). Applicants that seek to receive, and certain recipients of, housing assistance under any of the programs covered by this part, as well as certain officials of prospective private owners, must disclose their social security number(s). The failure of any person or entity to make the required disclosures

constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), for the covered program.

(3) Section 165 is implemented for HUD's unassisted mortgage and loan insurance and coinsurance programs under 24 CFR Chapter II, Subchapter B, at 24 CFR Part 200, Subpart T. This provision is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under 24 CFR Chapter II, Subchapter B, at 24 CFR Part 200, Subpart U, and for certain of the Department's community and neighborhood development programs, at 24 CFR Part 501.

(b) *Purpose.* The purpose of this part is to enable the Department to use social security and Employer Identification numbers to help decrease the incidence of fraud, waste, and abuse in the housing assistance programs subject to the part. Specific examples of how the Department may use social security and Employer Identification numbers include (but are not limited to) the following:

- (1) Identifying a person or entity in manual or automated records.
- (2) Identifying a person or entity during debt collection efforts.
- (3) Cross-checking among the Department's automated systems for a person's or entity's previous or current participation in other programs.
- (4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on the person's or entity's eligibility for, or level of benefits in, the Department's programs.
- (5) Identifying a person or entity for the purpose of requesting information about the person or entity from other government or private sources during audit or investigation.
- (6) Confirming a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.
- (7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided to it is appropriate.

§ 750.3 Applicability.

This part applies to the following housing assistance programs contained in Chapters VIII and IX of this title:

- (a) *Part 880*, Section 8 Housing Assistance Payments Program for New Construction.
- (b) *Part 881*, Section 8 Housing Assistance Payments Program for Substantial Rehabilitation.
- (c) *Part 882*, Section 8 Housing Assistance Payments Program for

Housing Certificates and Moderate Rehabilitation.

(d) *Part 883*, Section 8 Housing Assistance Payments Program for State Housing Agencies.

(e) *Part 884*, Section 8 Housing Assistance Payments Program, New Construction Set-aside for Section 515 Rural Rental Housing Projects.

(f) *Part 885*, Loans for Housing for the Elderly or Handicapped.

(g) *Part 886*, Section 8 Housing Assistance Payments Program—Special Allocations (Subpart A, Loan Management, and Subpart C, Property Disposition).

(h) *Part 887*, Housing Vouchers.

(i) *Part 900*, Section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(j) *Part 904*, Low Rent Housing Homeownership Opportunities.

(k) *Part 905*, Indian Housing.

(l) *Part 960*, Admission to, and Occupancy of, Public Housing.

§ 750.5 Definitions.

As used in this part:

Applicant means an individual applicant and an entity applicant.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

Entity applicant means a partnership, corporation, or any other association or entity, either non-profit or for-profit, that seeks to participate as a private owner in any of the programs contained in 24 CFR Part 880, 881, 884, 885, or 886. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or Department means the United States Department of Housing and Urban Development.

Individual applicant has the following meaning for the programs referred to in § 750.3:

(a) *Parts 880, 881, 884, 885, and 886:*

An applicant for assistance under the covered program, and an individual who seeks to participate in the covered program as a private owner.

(b) *Parts 882, 883, and 887:* An applicant for assistance or participation, as appropriate, under the covered program.

(c) *Part 900:* A family seeking assistance under the program.

(d) *Part 904:* A prospective homebuyer.

(e) *Part 905:* A prospective tenant or homebuyer under the program.

(f) *Part 960:* A prospective tenant.

Participant has the following meaning for the programs referred to in § 750.3.

(a) *Parts 880, 881, 882, 883, 884, 886, 887, and 900:* A family receiving assistance under the covered program.

(b) *Part 904:* A homebuyer under the program.

(c) *Part 905:* A tenant or homebuyer under the program.

(d) *Part 960:* A tenant under the program.

PHA means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families under 24 CFR Chapters VIII or IX. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility determinations and any regularly scheduled income reexaminations under any of the programs referred to in § 750.3.

Social security number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

Subpart B—Disclosure of Social Security and Employer Identification Numbers

§ 750.10 Disclosure of social security and Employer Identification Numbers.

(a) *Required disclosure: individual applicants, participants, and certain officials of entity applicants.* (1) The following individuals must disclose the complete and accurate social security number(s) that have been assigned to them:

(i) Each individual applicant under a program referred to in § 750.3, including each member of the household of the applicant (other than a member of the household of an applicant who seeks to participate as a private owner in the covered program).

(ii) Each participant in a program referred to in § 750.3 including each member of the participant's household.

(iii) Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant under a program referred to in § 750.3 as HUD may specify in administrative instructions.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

- (i) Is under the age of six; or
- (ii) Has not been assigned an SSN.

(b) *Required disclosure: entity applicants.*—Each entity applicant under a program referred to in § 750.3 must disclose the complete and accurate Employer Identification number(s) that have been assigned to it.

(c) *Disclosure: to whom and when.*—

(1) *Disclosure to the processing entity.*—The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity.

(2) *Disclosure by applicants.*—Applicants must make the disclosure referred to in paragraph (a) or (b) of this section (as appropriate), when their eligibility under a program referred to in § 750.3 is being determined.

(3) *Initial disclosure by those who were participants before [insert the effective date of this rule].* If the participant's initial eligibility for a program referred to in § 750.3 was initiated before [insert the effective date of this rule], the disclosure referred to in paragraph (a) of this section must be made at the next regularly scheduled income reexamination.

(4) *Subsequent disclosure by participants who have made an initial disclosure under this section.*—Once a participant has made the initial disclosure referred to in paragraph (c)(2) (as an applicant) or paragraph (c)(3) (as a preexisting participant) of this section, subsequent disclosures are not required, unless one of the following circumstances has occurred since the participant's eligibility under the program was determined, or since the last regularly scheduled reexamination of income (whichever is later), in which case the participant must make the disclosure required by (c)(5) of this section.

(i) There has been a change in the composition of the participant's family.

(ii) Any member of the participant's household has been assigned a SSN for the first time (including any member who is six years of age and has been assigned a SSN, as required by Section 6109(e) of the Internal Revenue Code of 1986).

(iii) Any member of the participant's household has obtained a previously undisclosed SSN card.

(iv) Such other circumstances as HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions.

(5)(i) In the circumstance described in paragraph (c)(4)(i) of this section, the participant must make the disclosure referred to in paragraph (a) of this section.

(ii) In the circumstances described in paragraph (c)(4)(ii) or (iii) of this section, only the household member or members who meet the requirements of either of those paragraphs must make the disclosure referred to in paragraph (a) of this section.

(d) *Required documentation.*—(1) *Social security number(s).* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN, as HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer identification number(s).* The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation, as HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify that he or she has not been assigned a SSN.

(4) Except as provided by paragraph (e) of this section, failure to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of an applicant, or terminating the assistance or the tenancy (or both) of a participant, under any program referred to in § 750.3, as provided by § 750.15.

(e) *Special documentation rules for individual applicants and participants.*

(1)(i) If an individual applicant (other than an applicant who seeks to participate as a private owner) or a participant (or any household member of the individual applicant or participant) who is required to disclose a SSN under paragraph (a) or (c) of this section cannot produce evidence of the SSN that is acceptable under paragraph (d)(1) of this section, the individual must provide his or her SSN and certify that the number provided has been assigned to the person, but that he or she cannot produce evidence to verify the number.

(ii) If an individual referred to in paragraph (e)(1)(i) of this section is under the age of 18 years, the required certification must be made by his or her parent or guardian, or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, by the individual or any other person, as the PHA deems appropriate.

(2) The processing entity must accept the certification referred to in paragraph (e)(1) of this section, and continue process the individual applicant's or participant's eligibility to participate in the program.

(3) *Individual applicants.* If the processing entity determines that the individual applicant is otherwise eligible for assistance, the applicant may not become a participant, in a covered program unless it presents to the processing entity the documentation required under paragraph (d)(1) of this section, and within the time period specified in paragraph (e)(5) of this section. During such period, the applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the covered program.

(4) *Participants.* If the processing entity determines that the participant otherwise continues to be eligible under the covered program, the participant will continue to participate in the program provided that it presents to the processing entity the documentation required under paragraph (d)(1) of this section, within the time period specified in paragraph (e)(5) of this section.

(5) An individual applicant or a participant under this paragraph (e) must provide the processing entity with the documentation required under paragraph (d)(1) of this section within 60 calendar days of the certification in paragraph (e)(1) of this section. Failure to do so constitutes grounds for denying eligibility to an individual applicant, or

terminating the assistance or tenancy (or both) of a participant, under any program referred to in § 750.3, as provided by § 750.15.

(f) *Rejection of documentation.* (1) The processing entity may reject evidence referred to in paragraph (d)(1) or (2) of this section, or a certification provided under paragraph (e)(1) of this section, only for such reasons as HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions.

(2) Rejection of documentation under paragraph (f)(1) of this section will, as provided in HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, PHA) administrative instructions, constitute grounds for denying eligibility to an applicant, or terminating assistance or tenancy (or both) for a participant, under any program referred to in § 750.3, as provided by § 750.15.

(g) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR Chapter III, (see particularly, Part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(h) *Form and manner of certifications.* The certifications referred to in paragraphs (d)(3) and (e)(1)(i) of this section must be in the form and manner that HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) prescribes.

§ 750.15 Penalties for failing to disclose social security and Employer Identification numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 750.3, if the individual applicant, or any member of the individual applicant's household, does not meet the SSN disclosure requirements specified in § 750.10.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 750.3, if:

(1) The entity applicant does not meet

the EIN disclosure requirements specified in § 750.10; or

(2) Any of the officials of the entity applicant referred to in § 750.10(a)(1)(iii) does not meet the SSN disclosure requirements specified in § 750.10.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance, and (as appropriate) the tenancy of a participant, under any of the programs referred to in § 750.3 if the participant, or any member of the participant's household, does not meet the SSN disclosure requirements specified in § 750.10.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 750.3 for further information on the use of SSNs and EINs in determining the eligibility of applicants, and the continued eligibility of participants.

§ 750.20 Limitations on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this part, and of any information derived therefrom, must be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

Subpart C—Implementation

§ 750.25 Implementation.

(a) *Applicants.* The provisions of this part, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 750.3, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

(b) *Participants.* The provisions of this part, and the conforming changes made with respect to the disclosure and use of SSNs for participants in the regulations governing the programs referred to in § 750.3, apply to:

(1) Each regularly scheduled reexamination of the income of a participant initiated by the processing entity on or after [insert effective date of this rule]; and

(2) Each such reexamination conducted thereafter.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

65. The authority citation for Part 813 would be revised to read as follows:

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

66. In § 813.109, paragraph (a) would be revised to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, e.g., 24 CFR Part 750: Part 880, Subpart F; Part 881, Subpart F; Part 882, Subparts B and E; Part 883, Subpart G; Part 884, Subpart B; Part 886, Subpart A; and Part 886, Subpart C. For purposes of this part, the provisions of Subpart F of Part 880 or 881, as appropriate, shall apply to projects developed under Part 885). As used in this Part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy, and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

67. The authority citation for 24 CFR Part 880 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

68. In § 880.305, paragraph (i) would be revised to read as follows:

§ 880.305 Contents of preliminary proposal.

(i) The identity of the owner, developer, builder, architect,

management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the disclosure of social security and Employer Identification Numbers, as provided by 24 CFR Part 750; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants.

69. In § 880.601, paragraph (b) would be revised to read as follows:

§ 880.601 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

70. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(3), (c)(1) and (c)(3), would be revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and Part 750 of Chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 880.613.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of a failure to disclose social security numbers (as provided by 24 CFR Part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the

applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

(4) * * *

(c) *Reexamination of Family income and composition.* (1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistant Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

71. In § 880.607, paragraph (b)(3) would be revised to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) *Entitlement of families to occupancy.*

(3) *Material noncompliance.* Material noncompliance with the lease includes:

(i) One or more substantial violations of the lease; or

(ii) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose social security numbers, as provided by 24 CFR Part 750 or knowingly providing incomplete or inaccurate information) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

72. The authority citation for 24 CFR Part 881 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

73. In § 881.305, paragraph (q) would be revised to read as follows:

§ 881.305 Contents of preliminary proposal.

(q) The identity of the owner, developer, builder, architect (if applicable and identity is known), management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the disclosure of social security and Employer Identification numbers, as provided by 24 CFR Part 750; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which

would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants.

74. In § 881.601, paragraph (b) would be revised to read as follows:

§ 881.601 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 881.613, selection of tenants, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

75. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(3), (c)(1) and (c)(3), would be revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and Part 750 of Chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 881.613.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or failure to disclose social security numbers (as provided by 24 CFR Part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also

exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 881.613 are contained in paragraph (k) of that section.

(c) *Reexamination of family income and composition.* (1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated, in accordance with HUD requirements, for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

76. In § 881.607, paragraph (b)(3) would be revised to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

(b) *Entitlement of families to occupancy.*

(3) *Material noncompliance.* Material noncompliance with the lease includes:

- (i) One or more substantial violations of the lease; or
- (ii) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or

safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose social security numbers, as provided by 24 CFR Part 750, or knowingly provided incomplete or inaccurate information) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

77. The authority citation for 24 CFR Part 882 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

78. In § 882.116, paragraphs (c) and (m) would be revised to read as follows:

§ 882.116 Responsibilities of the PHA.

(c) Receipt and review of applications for Certificates of Family Participation; provision of a Federal preference in selecting applicants for participation in accordance with § 882.219; verification of family income and other factors relating to eligibility and amount of assistance (including obtaining social security numbers from applicants, as provided by 24 CFR Part 750); and maintenance of a waiting list in accordance with this Part;

(m) Reexamination of Family Income, composition, and extent of medical or child care expenses; redeterminations, as appropriate, of the amount of Total Tenant Payment and amount of housing assistance payment in accordance with Part 813 of this chapter; and obtaining social security numbers from families, as provided by 24 CFR Part 750;

79. In § 882.118, paragraph (a)(1) would be revised to read as follows:

§ 882.118 Obligations of the family.

(a) The family must:

(1) Supply such certification, release, information, or documentation as the PHA or HUD determine to be necessary, including disclosure of social security numbers, (as provided by 24 CFR Part 750), and submissions required for an annual or interim reexamination of family income and composition.

80. In § 882.209, paragraph (a)(2) would be revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA must determine whether an applicant for participation:

- (i) Qualifies as a family;
- (ii) Has disclosed social security numbers, as provided by 24 CFR Part 750; and
- (iii) Is income-eligible.

81. In § 882.210, paragraph (e) would be revised to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(e) The PHA must terminate housing assistance payments for any family that fails to disclose social security numbers, as provided by 24 CFR Part 750.

82. In § 882.212, paragraphs (a) and (c) would be revised to read as follows:

§ 882.212 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other

rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

83. In § 882.514, paragraph (a)(1) would be revised to read as follows:

§ 882.514 Family participation.

(a) *Initial determination of family eligibility.* (1) The PHA is responsible for receipt and review of applications, and determination of family eligibility for participation in accordance with HUD regulations (see Parts 812 and 813, and 24 CFR Part 750). The PHA is responsible for verifying the sources and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.

84. In § 882.515, paragraphs (a) and (c) would be revised to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with

HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

85. The authority citation for 24 CFR Part 883 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

86. In § 883.403, paragraph (c)(1) would be revised to read as follows:

§ 883.403 HFA submission of proposals.

(c) *Proposal contents.* * * *

(1) The identity of the owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and others parties having a substantial interest in the project. This must include the previous participation of each person in HUD programs on the prescribed HUD form; a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC; the disclosure of social security and Employer Identification Numbers, as provided by 24 CFR Part 750; and information on the qualifications and experience of the principal participants;

87. In § 883.702, paragraph (b) would be revised to read as follows:

§ 883.702 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining social security numbers from families (as provided by 24 CFR Part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

88. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(3), (c)(1) and (c)(3), would be revised to read as follows:

§ 883.704 Selection and admission of tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and Part 750 of Chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 883.714.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or failure to disclose social security numbers (as provided by 24 CFR Part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request a review by the Agency and HUD of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 883.714 are contained in paragraph (k) of that section.

(c) *Reexamination of the family income and composition.* (1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the

owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated, in accordance with HUD requirements, for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

89. In § 883.708, paragraph (b)(3) would be revised to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

(b) *Entitlement of families to occupancy*

(3) *Material noncompliance.* Material noncompliance with the lease includes:

(i) One or more substantial violations of the lease; or

(ii) Repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building; or have an adverse financial effect on the building or project. Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose social security numbers, as provided by 24 CFR Part 750) or knowingly providing incomplete or inaccurate information will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

90. The authority citation for Part 884 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

91. In § 884.118, paragraphs (a) (3) and (7) would be revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) *

(3) Performance of all management functions, including the taking of applications; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.226, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with HUD-established schedules and criteria.

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with Part 813; and obtaining social security numbers from participants, as provided by 24 CFR Part 750.

92. Section § 884.205 would be revised to read as follows:

§ 884.205 Submission of proposal.

When FmHA intends to use a portion of its set-aside for a project under these subparts, it must submit to the HUD field office a Proposal for that project on the prescribed FmHA form, including the completed attachments and HUD Previous Participation Certificate form and the Owner's social security and Employer Identification Numbers, as provided by 24 CFR Part 750. Such proposal must be submitted by the FmHA state director with a cover letter stating that Section 8 assistance is desired for the proposed project.

93. Section 884.216 would be revised to read as follows:

§ 884.216 Termination of tenancy.

The Owner is responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies must be as set forth in § 884.106(c)(1).

Failure to disclose social security numbers, as provided by 24 CFR Part 750, will be grounds for termination of tenancy.

94. In § 884.218, paragraphs (a) and (c) would be revised to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent, or until the family loses eligibility for continued occupancy under Farmer's Home Administration regulations. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

95. The authority citation for Part 885 would continue to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

96. In § 885.210, paragraph (b)(1) would be revised to read as follows:

§ 885.210 Contents of applications.

(b) * * *

(1) The name, address, and telephone number of the Borrower and the sponsor (if any), as well as social security and Employer Identification Numbers, as provided by 24 CFR Part 750.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

97. The authority citation for 24 CFR Part 886 would be revised to read as follows:

Authority: Sections 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

99. In § 886.105, a new paragraph (g) would be added to read as follows:

§ 886.102 Content of application.

(g) The Owner's social security and Employer Identification Numbers, as provided by 24 CFR Part 750.

99. In § 886.119, paragraphs (a)(3) and (7) would be revised to read as follows:

§ 886.119 Responsibilities of owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), and other pertinent requirements; and determination of eligibility and amount of Tenant Rent in accordance with Part 813 of this chapter.

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with Part 813; collection of rent; and obtaining social security numbers from participants, as provided by 24 CFR Part 750.

100. In § 886.124, paragraphs (a) and (c) would be revised to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will

continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility will not affect the family's other rights under its lease, not will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with program requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

101. In § 886.313, a new paragraph (d) would be added, to read as follows:

§ 886.313 Other Federal requirements.

(d) Disclosure of social security and Employer Identification numbers, as provided by 24 CFR Part 750.

102. In § 886.318, paragraphs (a) (3) and (6) would be revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families in accordance with the owner's tenant selection factors approved by HUD and the Federal preferences in accordance with § 886.337; obtaining social security numbers from applicants, as provided by 24 CFR Part 750; verification of income and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with Part 813 of this chapter;

(6) Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses; redeterminations, as appropriate, of the amount of Tenant Rent and amount of housing assistance payment in accordance with Part 813 of the chapter; and obtaining social security numbers from participants, as provided by 24 CFR Part 750.

103. In § 886.324, paragraphs (a) and (c) would be revised to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine

whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

104. The authority citation for Part 900 would be revised to read as follows:

Authority: Sec. 10(b), United States Housing Act of 1937 (42 U.S.C. 1410(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

105. In section 900.103, paragraphs (i) and (j) would be revised to read as follows:

§ 900.103 Basic policies.

(i) *Responsibilities of the LHA.* The LHA is responsible for determining family eligibility for assistance in accordance with provisions of Parts 912 and 913, and family eligibility and continuing eligibility for assistance in accordance with 24 CFR Part 750; determining the amount of adjusted income, the amount of rent payable by the family, and housing assistance payments in accordance with Part 913; issuing Certificates of Family Participation to eligible families; notifying families determined eligible; approving owner-family leases; making housing assistance payments on behalf of eligible families; reexamining family eligibility at least annually; inspecting units before leasing, and at least annually thereafter, to determine that

the units are maintained in decent, safe and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); authorizing evictions; and complying with equal opportunity requirements. The LHA must provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination, in an affirmative manner to further the policies of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

(j) *Responsibilities of the family.* A family receiving housing assistance under this program is responsible for fulfilling all its obligations under both the lease with the owner and the Certificate of Family Participation issued to it by the LHA; for cooperating with reexamination requirements; and for disclosing social security numbers at the time that the family's eligibility is determined and at the time of any regularly scheduled income requirement, as provided by 24 CFR Part 750.

106. In § 900.202, paragraphs (d)(3) and (f)(2)(iii) would be revised to read as follows:

§ 900.202 Project operation.

(d) *LHA determination of family eligibility and lease approval.* * * *

(3) That the request cannot be approved because the family is not eligible (including ineligibility caused by the family's failure to disclose social security numbers, as provided by 24 CFR Part 750), or the dwelling unit or the proposed lease does not meet program requirements.

(f) *Continued family participation.* * * *

(2) * * *
(iii) The LHA determines that the family continues to be eligible for such assistance (including continued eligibility under 24 CFR Part 750).

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

107. The authority citation for Part 904 would be revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437-1437(q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

108. In § 904.104, paragraph (c) would be revised to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), must determine the eligibility of each applicant family in respect to the income limits for the development and the disclosure of social security numbers (as provided by 24 CFR Part 750), and must then assign each eligible applicant its appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

109. In § 904.107, paragraph (m)(1) would be revised to read as follows:

§ 904.107 [Amended]

(m) *Termination by LHA.* (1) If the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. If a homebuyer fails to disclose social

security numbers (as provided by 24 CFR Part 750) in applying for admission or in connection with any subsequent reexamination of income, the LHA must terminate the Agreement and the homebuyer's tenancy, as provided by 24 CFR Part 750. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intent to do so in accordance with paragraph (m)(3) of this section.

* * *

PART 905—INDIAN HOUSING

110. The authority citation for 24 CFR Part 905 would be revised to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(b) Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

111. In § 905.302, a new paragraph (b)(2)(v) would be added, to read as follows:

§ 905.302 Admission policies.

* * *

(b) *Other admission policies.* * * *

(2) * * *

(v) To achieve compliance with 24 CFR Part 750, which requires applicants and participants to disclose social security numbers at the time eligibility is determined and subsequently at regularly scheduled income reexaminations.

112. In § 905.406, paragraph (a) would be revised to read as follows:

§ 905.406 Selection of MH homebuyers.

(a) *Admission policies.* In adopting admission regulations in accordance with § 905.302, an IHA may establish admission policies for MH Projects which are different from those for Rental or Turnkey III Projects of the IHA, including different income and

assets limits. All admissions are subject to 24 CFR Part 750.

* * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

113. The authority citation for Part 913 would be revised to read as follows:

Authority: Secs. 3, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

114. In § 913.109, paragraph (a) would be revised to read as follows:

§ 913.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The PHA is responsible for determination of eligibility for admission; for determination of Annual Income, Adjusted Income and Total Tenant Payment; and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (Part 960, Subpart B, and 24 CFR Part 750). As used in this part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy, and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

* * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

115. The authority citation for 24 CFR Part 960 would be revised to read as follows:

Authority: Secs. 3, 5, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

116. In § 960.204, paragraph (c)(4) would be revised to read as follows:

§ 960.204 PHA Tenant selection policies.

* * *

(c) * * *

(4) Be in compliance with State, local and Federal laws and regulations, including the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, the provisions of the ACC, and 24 CFR Part 750.

* * *

117. In § 960.206, paragraph (a) would be revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See Part 913 of this chapter and 24 CFR Part 750). Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211, must be documented and placed in the applicant's file.

* * *

118. In § 960.209, paragraph (a) would be revised to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all tenant families at least once every 12 months and determine whether the family's unit size is still appropriate. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment and Tenant Rent in accordance with Part 913 of this chapter. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

* * *

Dated: September 30, 1988.

Samuel R. Pierce,
Secretary.

[FR Doc. 88-23786 Filed 10-14-88; 8:45 am]

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Environmental Protection Agency

Monday
October 17, 1988

Part VII

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration
for Nitrogen Oxides; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51 and 52**

(AD-FRL-3436-1)

Prevention of Significant Deterioration for Nitrogen Oxides**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is promulgating regulations under section 166 of the Clean Air Act (ACT) to prevent significant deterioration of air quality due to emission of nitrogen oxides. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration; these maximum allowable increases are called increments. Increments for nitrogen dioxide were proposed in the Federal Register on February 8, 1988 (53 FR 3698). Today's action promulgates these increments for nitrogen dioxide. The intended effect of these regulations is to require all applicants for major new stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the increments established today.

DATES: The revision to 40 CFR Part 51 will become effective October 17, 1989. The revisions to 40 CFR Part 52 will become effective November 19, 1990.

ADDRESSES: A docket, number A-87-16, containing information considered by EPA in the development of the promulgated regulations is available for public inspection between 8:00 a.m. and 4:00 p.m., weekdays, at EPA's Central Docket Section (LE-131), WIC Building, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Noble at Mail Drop 15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5362 (FTS 629-5362).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are provided in the following outline:

I. Summary of the Regulation**II. Discussion of the Regulations**

- A. PSD Increments
- B. Baseline Date
- C. Implementation Date
- D. Grandfathering Issues

III. Major Issues

- A. Pollutant Chosen for Increment
- B. Regulatory Alternatives
- C. Class II Increment
- D. Class I Increment
- E. Mobile Sources
- F. Model Facilities
- G. Air Quality Modeling
- H. Costs
- I. Restrictions on Siting
- J. Ozone
- K. Baseline Date
- L. Emissions Banking
- M. Administration

IV. Administrative**I. Summary of the Regulations**

Pollutant to be regulated.....	Nitrogen Dioxide.
Type of regulation.....	Increment.
Area classification scheme.....	Classes I, II, and III.
Increments	Class I, 2.5 $\mu\text{g}/\text{m}^3$.
	Class II, 25 $\mu\text{g}/\text{m}^3$.
	Class III, 50 $\mu\text{g}/\text{m}^3$.
Averaging time	Annual.
Major source baseline date	Feb. 8, 1988.
Trigger Date (for minor source baseline date)	Feb. 8, 1988.
Effective Date (Part 51).....	Oct. 17, 1989.
Effective Date (general) (Part 52)	Nov. 19, 1990.

II. Discussion of the Regulations

On February 8, 1988, the EPA proposed prevention of significant deterioration (PSD) regulations for nitrogen oxides under section 166 of the Act, 42 U.S.C. 7476 (see 53 FR 3698). The term nitrogen oxides refers to a family of compounds of nitrogen and oxygen. The principal nitrogen oxides component present in the atmosphere at any time is nitrogen dioxide. Combustion sources emit mostly nitric oxide, with some nitrogen dioxide. Upon entering the atmosphere, the nitric oxide changes rapidly, mostly to nitrogen dioxide. The conversion process continues, albeit much more slowly, producing nitric acid and nitrate salts. The February 8, 1988 notice proposed to revise 40 CFR Parts 51 and 52 adding increments for nitrogen dioxide to the existing PSD program. Increments establish the maximum allowable increases in ambient concentrations of a pollutant allowed in a PSD area, above applicable baseline concentrations in specified geographic areas, as a result of emissions from both stationary and

mobile sources. After receiving and reviewing public comments on the proposed increment requirements, EPA is today promulgating final nitrogen dioxide increments.

The 40 CFR 51.166 regulations adopted today specify minimum rulemaking requirements for approvable State implementation plan (SIP) revisions. The 40 CFR 52.21 regulations adopted today specify the revisions that will eventually be applied by delegation (or directly by EPA) to areas which have not, within the specified time, submitted SIP revisions to EPA pursuant to today's 40 CFR 51.166 revisions.

The regulations adopted today stem in part from a lawsuit filed by the Sierra Club and others against the EPA Administrator in 1986 (*Sierra Club v. Thomas*, No. C-86-0971 WWS (N.D. CAL.)). In April 1987, the U.S. District Court for the Northern District of California directed the EPA Administrator to conduct a regulatory development program for nitrogen oxides under a specified schedule. The Court's schedule called for the publication of proposed regulations for nitrogen oxides by February 9, 1988, which was accomplished. The Court further directed the Administrator to promulgate final regulations on later than October 9, 1988 (see 658 F. Supp. 165). Today's action satisfies the order of the District Court.

A. PSD Increments

The PSD increments for nitrogen dioxide were developed pursuant to the provisions of section 166 of the Act. Specifically, this section requires the adoption of PSD regulations for nitrogen oxides (as well as for other pollutants) to provide "numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, (and) protection of air quality values." Further, section 166 requires that the regulations include "specific measures at least as effective as" the existing increments established by Congress in section 163 of the Act for particulate matter and sulfur dioxide in meeting the goals and purposes of the PSD program.

The section 166 regulations for nitrogen oxides promulgated today are based on an ambient increment requirement for nitrogen dioxide as the numerical measure of significant deterioration in air quality. Nitrogen dioxide was selected as the pollutant for this regulation because it is the pollutant on which the national ambient air quality standards (NAAQS) for nitrogen oxides were based. Since the NAAQS are the measure of air quality, they are

also the most appropriate measure of changes in air quality, including significant deterioration. Nitrogen dioxide was also selected as the pollutant because nitrogen oxides emissions from stationary sources convert to nitrogen dioxide in the atmosphere.

The nitrogen dioxide increments follow the pattern enacted by Congress for the particulate matter and sulfur dioxide increments. These increments establish maximum increases in ambient air concentrations of nitrogen dioxide (expressed in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)) allowed in a PSD area over a baseline concentration. These increments are applicable to both stationary and mobile sources, and are implemented through a series of permit review requirements that are already in place for major new stationary sources or major modifications, as defined in 40 CFR Parts 51 and 52.

The nitrogen dioxide increment program also includes the three-tiered area classification system established by Congress in section 163 for increments of sulfur dioxide and particulate matter. Class I areas (including certain national parks and wilderness areas) were designated by Congress as areas of special national concern, where the need to prevent significant deterioration in air quality is the greatest. Consequently, the increment levels are most stringent in Class I areas. Class II areas are all areas not specifically designated in the Act as Class I areas. The increments of Class II areas are less stringent than the Class I increments and allow for a moderate degree of emissions growth. Class III areas are areas, originally designated as Class II, that have been redesignated by States where higher levels of industrial development and emissions growth are desired, and are subject to the least stringent increment requirement. There are as yet no Class III areas.

Today's notice establishes nitrogen dioxide increments based on the percentages Congress used to set the increments for sulfur dioxide and particulate matter. For example, the nitrogen dioxide Class I increment is set at $2.5 \mu\text{g}/\text{m}^3$, a level of 2.5 percent of the NAAQS. It is based on the Class I sulfur dioxide increment, which is set at the same percentage (2.5 percent) of the sulfur dioxide NAAQS. Similarly, the Class II increment has been set at $25 \mu\text{g}/\text{m}^3$ and Class III increment has been set at $50 \mu\text{g}/\text{m}^3$. The EPA considers these increments to be "at least as effective as" the existing particulate matter and sulfur dioxide increments in preventing significant deterioration of air quality.

The NAAQS for nitrogen dioxide is expressed in 40 CFR 50.11 in parts per million and in $\mu\text{g}/\text{m}^3$ (i.e., 0.053 ppm or $100 \mu\text{g}/\text{m}^3$). However, for consistency with the sulfur dioxide and particulate matter increments, $\mu\text{g}/\text{m}^3$ will be used throughout this preamble. The regulation incorporating these increments is also expressed in micrograms per cubic meter. It should be noted that these increments, like those for particulate matter and sulfur dioxide, are absolute limits. This means, for example, that a modeled impact of $25.1 \mu\text{g}/\text{m}^3$ for a proposed new source would result in an exceedance of the Class II increment of $25 \mu\text{g}/\text{m}^3$, while a modeled impact of $24.9 \mu\text{g}/\text{m}^3$ would not. In neither case is the result "rounded off" to $25 \mu\text{g}/\text{m}^3$.

The averaging time for the nitrogen dioxide increments is an annual average, based on the averaging period of the NAAQS for nitrogen dioxide. Unlike particulate matter and sulfur dioxide, for which there are both short-term NAAQS and short-term increments, there is no short-term nitrogen dioxide NAAQS. Therefore, there is no comparative basis to establish a short-term nitrogen dioxide increment that is equivalent to short-term sulfur dioxide and particulate matter increments. As a result, only an annual time period has been used in establishing increments for nitrogen dioxide.

In determining what increment levels could be considered "at least as effective as" the particulate matter and sulfur dioxide increments, EPA first looked to the example set by Congress in enacting the increments for particulate matter and sulfur dioxide. Then, EPA considered the ability of these and other alternative increments to stimulate new control technology and balance industrial growth with environmental concerns. In addition, a relative comparison of the known and potential adverse environmental effects of particulate matter and sulfur dioxide (the pollutants for which numerical increments have been established) to nitrogen dioxide was undertaken by EPA. Given the paucity of scientific data, a comprehensive, quantitative profile of these effects for the nitrogen dioxide versus sulfur dioxide and particulate matter increments could not be developed.

The EPA determined that the increments for nitrogen dioxide do provide a framework for stimulating improved control technologies. For new or modified sources seeking to locate in an area that is approaching the increment limit, the increments establish an incentive to apply more stringent

control technologies in order to avoid violating the increment.

The EPA has also determined that the nitrogen dioxide increments adopted today will balance industrial growth with environmental concerns. It is estimated that no industrial source would be prevented from constructing in an area where the full increment is available, with one possible exception (i.e., a major chemical plant in an urban area with adverse meteorological conditions). In fact, EPA estimates most urban areas will be able to accommodate a number of nitrogen oxide emission sources. At the same time, the increments will provide a degree of protection to the environment by providing a mechanism for limiting the deterioration in air quality resulting from emissions of nitrogen oxides in all areas of the country subject to the PSD program.

The increments provide greater protection of air quality in Class I areas than in Class II areas by providing more stringent limits on increases in ambient concentrations of nitrogen dioxide. Beyond the increment requirements, section 165 of the Act gives the Federal land manager (FLM) in charge of specific Class I areas the authority and discretion to require the examination of the impacts of new sources on the air quality related values (AQRV's) associated with those areas. If these impacts are determined to be adverse, the reviewing authority may deny the application unless additional measures are taken to protect those AQRV's, even in instances where the increment is not violated.

The Class I increments established by Congress for particulate matter and sulfur dioxide vary with respect to their relative percentage of the NAAQS. In establishing the Class I increment for nitrogen dioxide, EPA determined that nitrogen dioxide more closely resembles sulfur dioxide than particulate matter in its characteristics and sources of emissions, and, therefore, sulfur dioxide was the model followed in setting these increments. As a result, the nitrogen dioxide increment for Class I areas has been set at the same percentage of the nitrogen dioxide NAAQS as the sulfur dioxide increment is of the sulfur dioxide NAAQS.

The EPA has concluded that the increment is the only one of the ten regulatory alternatives discussed in the 1980 Advanced Notice of Public Rulemaking (45 FR 30099) that currently provides a workable numerical measure and ultimately prevented. The EPA believes that the increment approach will best fulfill the goals of the PSD

program, as well as utilize the expertise already developed by State and local regulatory agencies in implementing increment-based programs for particulate matter and sulfur dioxide. This approach will require applicants for major new stationary sources and major modifications to model the area around the proposed source for increment exceedances. No support has been evidenced at the State level for any measure, other than direct application of the increments, for implementing the section 166 regulations for nitrogen oxides. However, since other methods might be preferable to some States, EPA remains open to other possible implementation approaches, provided that such approach (e.g., emissions density zoning) can be demonstrated to be as effective as direct application of the increments, as required by section 166. The EPA does not plan to issue any guidance on developing such alternatives. Interested States may develop alternatives on their own initiative and submit the proposed approach to EPA for approval.

B. Baseline Date

The term "baseline date," as used here and in the preamble to the proposed regulations, is somewhat of a misnomer, as it encompasses three different dates: (1) The major source baseline date, (2) the minor source baseline date, and (3) the trigger date for the minor source baseline date. The major source baseline date is the date after which construction of any major new or modified stationary source of nitrogen oxides emissions in a PSD area consumes increment. The minor source baseline date is the date after which emissions from all new or modified sources consume (or expand) increment, including emissions from major and minor sources. Once the baseline concentration is set, changes in actual emissions at any source consume (or expand) increment, regardless of whether the emissions changes are a result of construction. The minor source baseline date is the earliest date after a so-called "trigger date" on which a complete application for a major source or major modification is submitted for approval to a reviewing authority.

The date for both the major source baseline date and the trigger date proposed in the *Federal Register* was the date of proposal, February 8, 1988. The EPA has concluded that this date complies with the provisions of the Act while avoiding placing unnecessary administrative complexities on State agencies and permit applicants.

C. Implementation Date

There are two important time periods specified by section 166(b) of the Act that will affect the implementation of the increments for nitrogen dioxide. First, a 1-year time period is required by section 166(b) between the date of promulgation of these PSD section 166 regulations and the effective date of the regulation. Second, section 166(b) of the Act also provides States up to 9 months following the effective date of promulgation of the new regulations to prepare the necessary amendments to SIP's, and an additional 4 months (13 months total) for EPA to review the proposed SIP revisions prior to determining their approvability. Consequently, a period of up to 25 months (12 months from promulgation to the effective date plus 13 months for SIP approval) could elapse between the promulgation of these increments and their implementation.

The actual time which elapses between promulgation and implementation depends on two factors: The mechanism by which the PSD program is implemented in an area; and the action a State or area takes to enable it to implement the program. There are three mechanisms by which the PSD program is implemented. First, State can have its own PSD permitting procedures which have been approved by EPA as meeting the requirements of 40 CFR 51.166; this is termed a SIP-approved program. Second, where a State has failed to submit a PSD program meeting the requirements of 40 CFR 51.166, EPA can, pursuant to 40 CFR 52.21, delegate authority to the State to issue PSD permits in accordance with the Federal PSD regulations in 40 CFR 52.21; this is termed a delegated program. Finally, in a few areas of the country that have neither submitted an approvable program or sought a delegation, and in Indian lands where States lack authority to administer PSD requirements, EPA Regional Offices issue PSD permits directly, under 40 CFR 52.21.

Clearly, for SIP-approved programs, section 166(b) of the Act contemplated a 40 CFR 51.166 rule that would take effect 12 months after promulgation and allow States 9 months after that (21 months after promulgation) to submit revised SIP's incorporating the nitrogen dioxide increments. The EPA was then expected to approve or disapprove the SIP revision within 4 months, so the maximum time anticipated for implementation in SIP-approved areas is 25 months. The EPA will follow this schedule. Each State or area with a SIP-approved PSD program will have until

July 17, 1990, to submit to EPA a SIP revision implementing the nitrogen dioxide increment rule. Revised SIP's may, of course, be submitted earlier, but EPA cannot approve any such revisions until October 17, 1989, the effective date of today's 40 CFR 51.166 revision. If a State with a SIP-approved program fails to submit SIP revisions which incorporate the nitrogen dioxide increment regulations within 21 months, EPA will proceed through rulemaking to create a Federal (but delegable) program for that State which embodies the necessary additional provisions as promulgated in 40 CFR 52.21.

It is evident from Part C of the Act generally, and the detailed schedule in section 166 of the Act in particular, that Congress anticipated that virtually all the PSD programs would be SIP-approved by the time of section 166 rulemaking. Such is, however, not the case; 18 States have delegated PSD programs and EPA still implements the PSD program directly in all or part of two States, as well as in Indian lands.

In proposing this rule, EPA requested comment on the following two implementation date options for States currently lacking SIP-approved PSD programs and for Indian lands:

(1) October 17, 1989, the same effective date as the 40 CFR 51.166 revisions, or

(2) November 19, 1990, the date by which the Act anticipated the program would be implemented.

Upon further consideration, EPA has concluded that the most appropriate and consistent approach to implementing this regulation is to follow the language of section 166 to the greatest extent possible. Specifically, section 166(b) provides up to 21 months from the date of promulgation of section 166 regulations for States to submit SIP revisions to EPA for approval. The EPA believes it appropriate to provide each State an opportunity to develop a SIP-approved program. Therefore, every State will be provided 21 months in which to develop and submit a SIP program for PSD, including the regulations required by today's action. This approach should also minimize differences in implementation dates between the States due to differences in PSD program mechanisms. Therefore, this regulation establishes the general effective date of today's 40 CFR 52.21 revisions as November 19, 1990.

It should be noted, however, that, as events actually unfold over this 25-month period, the revisions to 40 CFR 52.21 regulations may come into effect in some areas at times other than the generally applicable effective date. First,

a State might adopt and submit the necessary SIP revisions (perhaps as part of a comprehensive PSD permitting program) and EPA might approve it, all between the 12-month and 25-month points. In that case, the revisions to 40 CFR 52.21 would not go into effect in that State at all. Second, EPA might advance the general effective date in the case where a State stipulates, in writing, that it does not intend to submit the necessary SIP revisions (thereby rejecting the 21-month SIP development time provided in the Act), and requests that EPA delegate to it (i.e., the State) the administration of the nitrogen dioxide increments program contained in § 52.21. Third, EPA might postpone the generally applicable effective date in the case of a State which submitted the necessary nitrogen dioxide revisions before the 21-month point but had not obtained EPA action on the submission before that effective date. In such a case, the postponement would last for the time it takes EPA to act on the submission. Finally, if an Indian tribe requests, in writing, an earlier effective date, EPA will consider advancing the effective date in accordance with the tribe's wishes. The EPA will make a case-by-case judgment based on all of the circumstances at the time of the request. In no event, however, would EPA make those revisions effective any earlier than the 12-month point.

Although implementation of the nitrogen dioxide increment program may not occur for up to 25 months after promulgation, EPA believes that it is prudent for States to be aware of the nitrogen dioxide increment consumption that is occurring during the interim period between the baseline date (February 8, 1988) and the implementation date. Determining increment consumption during this interim period will minimize the difficulties that would otherwise occur in retroactively determining the amount of increment consumption following actual implementation of the nitrogen dioxide increment regulations. Therefore, EPA urges States to have all permit applications for major new and major modified sources include a nitrogen dioxide increment consumption analysis. In the same vein, it would be appropriate for States to use the result of these analyses: (1) In evaluating BACT recommendations, and (2) to encourage sources which would consume most of, or exceed, an increment to mitigate their impact before construction.

D. Grandfathering Issues

Anticipating that today's amendments to § 52.21 will come into effect at some

time in at least some areas (i.e., not all States will submit approvable SIP revisions within the specified 21-month period), EPA has clarified the applicability of those amendments to projects that have already received permits or filed applications by the time the amendments do take effect. The EPA has added to § 52.21(i) a paragraph that states that the amendments requiring a nitrogen dioxide increment consumption analysis would not apply to any project that has already filed a complete application, including any project that has already received a permit, before the effective date of the amendments. The EPA has added to § 51.166(i) a paragraph that a State-adopted plan may contain a like exemption based on completion of a PSD permit application. A State, of course, may elect to have a more narrow exemption or no exemption at all.

In making a decision on whether to include an exemption in the SIP, States should note that major new and modified sources will consume increment after the baseline date. If, when increment consumption is eventually determined, the analysis indicates that exceedances of the increment are occurring, the State must take corrective action. This could possibly affect the level of control at already-permitted sources. To avoid such situations, States may elect not to include a grandfathering provision in their regulations.

III. Major Issues

The proposed section 166 regulations for nitrogen dioxide increments were published in the *Federal Register* on February 8, 1988 (53 FR 3698). The preamble to the proposed regulations discussed the availability of the Technical Support Document and other reference documents used in the development of these regulations. These documents describe in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the preamble and the Technical Support Document were distributed to interested parties.

To provide interested persons the opportunity for oral presentation concerning the proposed increment regulations, a public hearing was held on March 23, 1988 at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed regulations.

The public comment period was from February 8, 1988 to April 22, 1988. Not counting requests for time extension and duplicate entries, fifty comment letters

were received from industry; Federal, State, and local agencies; trade and regulatory associations and environmental groups. Most of the comment letters contained multiple comments. Each of the major issues raised by commenters is discussed below, along with EPA's consideration of the comments. Related comments made by different commenters are grouped together and responded to in summary form below. A more detailed response to the comments received is available in the docket. The major issues are:

- (A) Pollutant chosen for increment;
- (B) Regulatory alternatives;
- (C) Class II increment;
- (D) Class I increment;
- (E) Mobile sources;
- (F) Model facilities;
- (G) Air quality modeling;
- (H) Costs;
- (I) Restrictions on siting;
- (J) Ozone;
- (K) Baseline date;
- (L) Emissions banking; and
- (M) Administration.

A. Pollutant Chosen for Increment

Two commenters stated that the PSD regulations for nitrogen oxides should not be limited in scope to ambient levels of nitrogen dioxide. These commenters stated that, by focusing on nitrogen dioxide, EPA has essentially excluded any mechanism or effective tool for assessing the impacts that will result from the conversion of nitrogen dioxide to a nitrate salt or nitric acid. Further, the commenters pointed out that EPA's focus on nitrogen dioxide is neither justified nor appropriate because section 166 of the Act speaks of nitrogen oxides. Finally, the commenters asserted that EPA has not justified the selection of nitrogen dioxide with reference to the specific goals and purposes of the PSD program, and that the protection of AQRV's (particularly against acid deposition and visibility impairment) requires the consideration and analysis of the impacts of all nitrogen oxides, not just nitrogen dioxide. The term AQRV refers to items of importance to a Class I area which can be affected by air pollutants. Visibility, water acidity, and specific plants and animals are typical subjects of AQRV analysis. The FLM is responsible for determining AQRV's for each Class I area.

The EPA's selection of nitrogen dioxide as the pollutant targeted by this regulation is consistent with congressional action in establishing sulfur dioxide as the increment for all sulfur compounds. Further, qualitative analyses of the impacts of nitrates (and

other nitrogen-containing compounds) in AQRV's are currently required under section 165(d)(2) as part of the consideration of PSD permit applications affecting, or potentially affecting, Class I areas (40 CFR 51.166(p) and 40 CFR 52.21(p)). The impacts on nitrates can therefore be addressed (albeit in a more qualitative manner): (1) Through the use of section 165 of the Act, which gives FLM's authority to review and comment on permit applications that would adversely affect AQRV's in Class I areas (40 CFR 51.166(p) and 40 CFR 52.21(p)), and (2) in Class II area by soil and vegetation analyses (40 CFR 51.166(o) and 52.21(o)).

One commenter stated that the nitrogen oxides PSD regulations should include a short-term increment, since the short-term effects addressed by the increment are not necessarily the same as those addressed by the annual NAAQS for nitrogen dioxide. This commenter stated that EPA should conduct a comparison of the effects of the nitrogen dioxide increment with the short-term sulfur dioxide increment in order to determine equal effectiveness.

As EPA stated in the preamble to the proposed regulation, there is no comparable basis on which to base a short-term increment for nitrogen dioxide. The use of the annual NAAQS as the basis of the increment is consistent with the approach taken by Congress with sulfur dioxide and particulate matter. Because there currently is no short-term NAAQS for nitrogen dioxide (which would define short-term air quality), there is currently no comparable basis for a short-term nitrogen dioxide increment.

B. Regulatory Alternatives

Several commenters stated that a PSD regulation for nitrogen oxides is unnecessary or should be based on the use of BACT, rather than on an increment approach, because of the current PSD requirement for stringent BACT. While EPA agrees that BACT requirements currently in place for nitrogen oxides certainly affect the amount of emissions at a proposed site, BACT cannot prevent a significant increase in ambient levels of nitrogen dioxide in areas where multiple facilities locate near one another. Further, section 166(c) requires the PSD program for nitrogen oxides to "provide * * * a framework for stimulating improved control technology." Under the increment program, as new sites are permitted they consume available increment. As the available increment is consumed, industry may be compelled to find more effective control measures than

previously existing BACT in order to expand existing operations or to build new facilities, thereby stimulating improved control technology.

The EPA has reviewed other regulatory alternatives, as discussed in the preamble to the proposed rulemaking. The EPA determined, however, that use of BACT alone does not satisfy the requirements of the Act. While BACT is an important regulatory tool in limiting the emissions from single sources, it must (in the long term, and in consideration of the potential impacts of multiple sources) be coupled with an increment or some other regulatory mechanism in areas where emissions are increasing in order to prevent significant deterioration in air quality.

A few commenters suggested that increments should be established on a regional basis, rather than nationwide. There are at least two difficulties with regional increments that led EPA to reject this alternative. First, such increment would be difficult to develop and implement. Appropriate increment levels would have to be developed individually for each region based on air quality values, economic growth rates, and other characteristics of the region. Determining the boundaries of each region would also be difficult.

Second, there is neither precedent nor clear authority in the Act for developing regional increments. Both the provisions of the Act and the history of the development and implementation of the PSD program by Congress and EPA support the conclusion that the increments are intended to be nationwide in scope, rather than regional.

C. Class II Increment

Nearly all facilities affected by today's regulation would be located in Class II areas. Some of these facilities may be located relatively close to a Class I area, but all will have to comply with at least the Class II increment. The level of the Class II increment drew numerous comments.

Several commenters stated that the inclusion of mobile source emissions in the PSD analysis is inappropriate and could, in effect, make the nitrogen dioxide increment more stringent than the particulate matter and sulfur dioxide increments.

The EPA does not agree with these comments for two reasons. First, the requirement that the effect of mobile source emissions on increment consumption to be examined is not applicable only to this nitrogen dioxide increment. Emissions from mobile sources, however, account for a much greater proportion of the ambient

concentration of nitrogen dioxide than for either sulfur dioxide or particulate matter, so it is understandable that the provision may seem new. Nevertheless, this requirement is in the current PSD regulations for sulfur dioxide and particulate matter (see 40 CFR 52.21(o) for provisions relating to area source analyses), and no acceptable rationale for altering the rule was provided.

Second, EPA's analysis indicates that, under some circumstances (e.g., urban areas), the decreasing contribution of mobile sources to nitrogen dioxide concentrations will actually improve nitrogen dioxide air quality (albeit temporarily) as controls on nitrogen oxides emissions from mobile sources result in reductions in mobile source emissions. This decrease in mobile source emissions should effectively expand the nitrogen dioxide increment available for other sources. As a consequence, for at least an estimated 5 to 10 years, the inclusion of mobile sources in the increment analysis for nitrogen dioxide should not make this regulation more stringent or the siting of industrial facilities more difficult, overall, than the existing increments for particulate matter and sulfur dioxide.

Several commenters, while stating that the nitrogen dioxide increment is more stringent than the particulate matter and sulfur dioxide increments, pointed out that congressional acid rain proposals call for nitrogen dioxide reductions that are one-half to one-third the reductions required for sulfur dioxide. This, they felt, suggests that Congress recognizes that sulfur dioxide has a greater environmental impact than nitrogen dioxide. Consequently, they argue that the nitrogen dioxide increment could be set at a level two to three times greater than the sulfur dioxide increments, measured as a percent of the NAAQS.

The EPA disagrees for a number of reasons. First, the acid rain legislation is in the proposal stage at this time. It would not be prudent, or permissible, for an agency to rely on proposed legislation in promulgating regulations. Second, even if the proposals are enacted, they are designed to address air quality and programmatic goals that are different from those addressed by the PSD increment program. The acid rain bills are designed to place limits on the emissions of pollutants that result in a specific environmental problem. Consequently, they may differentiate between pollutants based on various factors (e.g., control technology costs). The PSD program was developed with a different goal. It is intended to protect public health and welfare against actual

or potential adverse effects notwithstanding compliance with the NAAQS; protect and enhance air quality in national parks and other areas of special concern; insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; assure that emissions from one State will not interfere with the PSD plan of another State; and assure that decisions to increase air pollution are made only after careful evaluation of the consequences and public participation in the decisionmaking process (see section 160 of the Act). Consequently, the fact that Congress may be considering dissimilar control rates for sulfur rates for sulfur dioxide and nitrogen dioxide emissions for acid rain reduction does not imply that the same ratio should be adopted for PSD purposes.

Numerous commenters stated that the increments for nitrogen dioxide should be based on an evaluation of the environmental effects of nitrogen dioxide compared to those effects caused by particulate matter and sulfur dioxide. As indicated above, EPA believes that in adopting section 166, Congress was primarily concerned with preventing significant increases in ambient pollutant concentrations. Nevertheless, in its determination of "at least as effective as," EPA considered a variety of factors. These included the potential for the stimulation of new control technology, the possibility of adverse economic impacts on sources, and the potential or possible adverse effects of the pollutant in question.

When looking at the potential adverse effects of nitrogen dioxide versus sulfur dioxide and particulate matter, EPA undertook two analyses: (1) A comparative assessment of the potential for formation of acid compounds and particulate matter from nitrogen dioxide and sulfur dioxide, and (2) an analysis (which is discussed later in this document) of the potential for the nitrogen dioxide increments to limit an area's ability to attain the ozone NAAQS in areas where higher nitrogen oxides emissions might reduce ozone concentrations.

The comparative analysis was performed by EPA to determine the relative amounts of acidic compounds and particulate matter that could theoretically be generated from comparable concentrations of nitrogen dioxide and sulfur dioxide in the ambient air. It was concluded that, on an air quality basis, the conversion of roughly equivalent fractions of the ambient standards for nitrogen dioxide and sulfur dioxide to acid would

produce comparable amounts of acid. The analysis also showed that comparable amounts of particulate matter would be generated if equivalent fractions of the standards were converted to salts. Thus, when compared to sulfur dioxide on the basis of the formation of either acids or salts (nitrate or sulfate), the nitrogen dioxide Class II increment of $25 \mu\text{g}/\text{m}^3$ was found to be comparable to the sulfur dioxide Class II increment of $20 \mu\text{g}/\text{m}^3$. These analyses have been included in the public docket for this rulemaking.

This analysis did not attempt to assess factors such as pollutant fate, transport, or transformation. Rather, it assumed in each case that all the sulfur dioxide or nitrogen dioxide present would be converted to acid or salts. (Other pollutants such as sulfuric acid, nitric acid, and peroxyacetyl nitrate (PAN) can form from the emitted nitrogen oxides and sulfur dioxide and can coexist in the atmosphere with nitrogen dioxide and sulfur dioxide.) In addition, the analysis was not able to consider possible benefits (e.g., some of the acidic transformation products of nitrogen dioxide may be beneficial to the environment, at lower deposition rates, by stimulating terrestrial plant growth). Given that the uncertainty ranges associated with benefits analysis are too broad to permit their use as a tool to distinguish between comparatively narrow differences in options, EPA determined that it could not comprehensively compare the different effects due to sulfur dioxide and nitrogen dioxide to determine nitrogen dioxide increments "at least as effective as" those for sulfur dioxide.

In the absence of sufficient information as to the relative adverse effects of sulfur dioxide versus nitrogen dioxide, and with the only available comparative results indicating relative equivalence of the sulfur dioxide and nitrogen dioxide increments, EPA believes that it is reasonable to base its evaluation of significant deterioration on the percentages of the NAAQS, as Congress did for sulfur dioxide and particulate matter.

One commenter recommended that, where sources of nitrogen oxides outnumber those of sulfur dioxide, the proposed increment should be expanded to allow for continued economic expansion. On the other hand, another commenter suggested that increments for Class II areas should not be set at levels that specifically provide for industrial expansion, but that industrial expansion should be addressed through the use of Class III area designations.

The Class II nitrogen dioxide increments adopted by EPA followed the approach established by Congress in setting the Class II sulfur dioxide increment level to allow for continued expansion of emissions from sources, but within acceptable limits. Analyses were conducted by EPA to determine the projected impacts on industrial growth that would result from the promulgation of various increments. Based on these analyses, EPA has concluded that the impact on industrial growth will not be significant for a $25 \mu\text{g}/\text{m}^3$ increment. As noted, in instances where States wish to allow higher levels of growth in industry and emissions than permitted under the Class II increments, the PSD program provides procedures for States to designate Class III areas that would have less stringent increment requirements.

Other commenters suggested that setting the increment at 25 percent of the annual NAAQS for nitrogen dioxide is "unfounded, arbitrary, and simplistic;" that the percentages used to establish the increment should be based on the secondary NAAQS for particulate matter, rather than the primary NAAQS; and that the increment should be set at a level equal to the NAAQS.

Section 166 of the Act requires the nitrogen oxides regulations to be "at least as effective as" the sulfur dioxide and particulate matter increments enacted by Congress. As previously discussed, the EPA believes that basing the increments for nitrogen dioxide on the same percentage of the NAAQS as was used for the statutory increments is a reasonable approach to complying with this requirement, because it uses the same method Congress used. When Congress established the increments for particulate matter and sulfur dioxide, it generally calculated them as a percentage of the lower of the primary or secondary NAAQS for each averaging time. In the specific case that one commenter has raised, the annual average particulate matter increments were set by Congress at levels that were 8.3, 31.3, and 61.7 percent of the then annual average secondary NAAQS, which was based on total suspended particulate (TSP). However, as noted in those standards, the annual average secondary NAAQS was "a guide to be used in assessing implementation plans to achieve the 24-hour standard." Since the annual average particulate matter increments were established at levels that were 6.7, 25.3, and 49.3 percent of the then annual average primary NAAQS, it is reasonable to assume that Congress simply ignored the secondary guide.

The EPA, in turn, followed that approach for the nitrogen dioxide increments. Since the primary and secondary nitrogen dioxide NAAQS are the same, in effect the Class II nitrogen dioxide increment is based on 25 percent of either the primary or secondary nitrogen dioxide NAAQS. The EPA does not agree with the suggestion that the increment be set at a level equal to the NAAQS, since that would not provide clean air areas of the country with any of the protection against significant deterioration of air quality that is the stated purpose of the PSD provisions set forth in section 166 of the Act.

D. Class I Increment

The level of the Class I increment will, of course, affect any source that may locate within the boundaries of the Class I area but, more commonly, will affect those sources located in Class II areas which impact ambient nitrogen dioxide levels in a nearby Class I area. The stringency of the Class I increment caused concern primarily to commenters representing industry.

Two commenters stated that the Class I increment did not necessarily have to be set at 2.5 percent of the NAAQS for nitrogen dioxide, since Congress based the particulate matter and sulfur dioxide increments for Class I areas on different percentages of the NAAQS for those pollutants. These commenters suggested that EPA consider the impacts of nitrogen oxides on visibility or vegetation in selecting the size of the Class I increment. Other commenters suggested a higher percentage of the nitrogen dioxide NAAQS for the Class I nitrogen dioxide increment than Congress used for either particulate matter or sulfur dioxide. They believed less stringent increments could be justified because of differences they perceived in the environmental impacts of nitrogen dioxide compared to particulate matter and sulfur dioxide. One commenter recommended a more localized Class I increment, based on the unique AQRV's of the specific Class I area.

The EPA has concluded that the proposed Class I increments are consistent with the requirements of the Act and with previous congressional action in setting increments. In the PSD program, AQRV's are those environmental, social, aesthetic, and economic characteristics of Class I areas that are dependent upon existing ambient pollutant concentrations. Inasmuch as the PSD program is designed to define and to prevent significant deterioration in air quality on a nationwide basis, the increments

themselves do not address the variability in local AQRV's associated with specific Class I areas. Flexibility to address specific AQRV concerns or to grant waivers when AQRV's would not be threatened is provided to the FLM's and EPA during the process of permit review by section 165 of the Act (40 CFR 51.166(p) and 40 CFR 52.21(p)). Congress set low Class I increments for particulate matter and sulfur dioxide, and provided a mechanism in section 165 of the Act for the denial of a PSD permit where these AQRV's are adversely impacted, even when the Class I increment would not be violated. Today's action establishes a similarly stringent Class I increment for nitrogen dioxide using the sulfur dioxide increment established by Congress as a model. Sulfur dioxide, rather than particulate matter, was chosen as a model because, as noted earlier, nitrogen dioxide sources (primarily combustion sources) and emissions characteristics more closely resemble those of sulfur dioxide.

One commenter warned that the proposed Class I increment would constrain the future development of oil and gas reserves, affecting prices and supply. This commenter was also concerned with the impact analysis developed by EPA, thinking that enhanced oil recovery projects will be more prevalent in the future than assumed in the EPA analysis. These projects (e.g., oil shales, tar sands, steam floods for heavy crudes), which will use fuel-burning equipment, are large sources of nitrogen oxides emissions. The most likely sites for these projects are in the Rocky Mountain Region and California, possibly close to Class I areas.

The EPA's analysis of existing sources located near Class I areas indicates that none of these sources would have been seriously constrained by the nitrogen dioxide increment. In large part, this is because relatively few nitrogen oxides sources have located near Class I areas and there has been little overlap in the impact areas of different sources. Assuming these conditions continue, future siting of energy-related sources, or any other sources, can generally be contained only if the entire increment is consumed by an individual source. Even then, the FLM, if so convinced, can certify that a source in the vicinity of a Class I area will have no adverse impact on AQRV's, allowing the permit to be issued. The analysis mentioned above also indicates that exceedances of the short-term sulfur dioxide increments are more likely to be constraining for these source categories than the nitrogen

dioxide increment being promulgated today.

E. Mobile Sources

One commenter stated that mobile source emissions should not be included in the increment analysis because such emissions are not significant contributors to ambient nitrogen dioxide concentrations. The EPA has concluded that, although individual mobile sources may not be significant sources of nitrogen oxides emissions, in the aggregate they are very significant sources, particularly in urban areas. It is estimated that mobile sources produce, nationwide, almost half of all nitrogen oxides emissions. Consequently, the regulations promulgated today continue to require the inclusion of mobile sources in increment analyses.

The rationale for the inclusion of mobile source emissions in increment analyses is that the Act indicates Congress was concerned that increment consumption reflect actual ambient concentrations. The declaration of purpose in section 160 of the Act addresses the potential for increased air pollution without distinguishing between mobile and stationary sources. Although the operative provisions of Part C undoubtedly are geared toward stationary sources, the statute does not suggest that either States or EPA can ignore air quality deterioration caused by mobile sources. This argues strongly that EPA should continue to include mobile sources (as well as other minor and area sources) as increment-consuming sources of emissions.

A number of commenters stated that mobile sources should be excluded from the nitrogen dioxide increment analysis because: (1) Of the difficulty in (a) assessing the effectiveness of mobile source nitrogen oxides emission controls, (b) determining mobile source emissions over an area, and (c) determining the amount of increment consumed or expanded by mobile source emissions; (2) mobile sources have not been included in these analyses in the past for particulate matter and sulfur dioxide; (3) it is generally "impossible" to determine mobile source emissions growth for allowable emissions because of variables of highway design capacities, residential growth, or small business growth, especially considering local variation in weather conditions; and (4) the inclusion of mobile sources in modeling will reduce the accuracy of the model and increase analysis costs so that they will exceed the benefits derived from the inclusion of mobile sources.

In contrast to the commenters' concerns, EPA believes it is appropriate to include mobile sources in the increment program and that mobile source emissions will not unduly complicate the nitrogen dioxide increment program. This rule is not the first regulatory action that requires determining the emissions from mobile sources over an area. For instance, estimates of mobile source emissions are also made for SIP demonstrations of reasonable further progress and attainment, and for other regulatory programs. These techniques are well-documented, and have not posed undue burdens on the implementation of these regulatory programs. Therefore, it is not anticipated that their use in the PSD program for nitrogen dioxide increments will be unreasonably complex. In order to clarify the application of these procedures to the increment analysis for nitrogen dioxide, however, EPA will develop additional guidance in the use of these emissions estimating procedures for PSD applications.

The EPA does not feel that the inclusion of mobile sources in the analysis of nitrogen dioxide increment consumption should place too great a burden on PSD applicants. Currently, applicants obtain data on stationary source emissions from States and use this data to model increment consumption. Similarly, data on vehicle miles traveled in the vicinity of a proposed new or modified major source could be obtained from the State and used to model increment consumption (or expansion) by mobile sources. If a State has no data available on traffic patterns in the vicinity of the source, but has other data available or believes mobile source data from other studies or reports to be more accurate than State data, the use of such alternative data may be approvable on a case-by-case basis. Further, if a new PSD permit applicant is proposing to locate in close proximity to a previous PSD permittee, the new application may incorporate the previous applicant's mobile source analysis if the previous application is less than one year old (or the data have been updated by the new applicant), covers the same general impact area, and no new mobile source data have become available.

A number of commenters said it is inappropriate to make regulations specifying the use of the *Mobile 4* emission model when that model has not been made available. In response to this comment, EPA has changed this requirement to state that preliminary analyses should be made with the latest version of the *Mobile* model. Revisions

to the *Mobile* model are announced in the *Federal Register*.

Commenters claimed that including mobile source emissions in increment analyses will constrain the siting of stationary sources. Based on the results of an analysis conducted by EPA, a reduction in emissions from mobile sources will likely occur in many urban areas until the mid-1990's, resulting in an expansion of the increment in those areas. For this reason, the inclusion of mobile source emissions in the increment analysis for nitrogen dioxide should not constrain industrial stationary source growth during that time period.

Commenters also stated that EPA's conclusion that projected reductions in mobile source emissions will result in expansion of the increment is erroneous and commented that, in high growth areas, mobile sources may consume increment even though individual auto emissions may be decreasing. One commenter cited Texas Air Control Board (TACB) analyses that show that nitrogen dioxide levels in urban areas have stayed the same throughout the 1980's, rather than decreasing with reductions in vehicle emissions.

The EPA has reviewed the previously mentioned TACB ambient monitoring data study. The TACB results do not necessarily mean that ambient nitrogen dioxide levels from mobile source emissions are not decreasing. One possible conclusion from that study would be that increases in nitrogen oxides emissions from stationary sources are compensating for the decreasing mobile source emissions, in at least some urban areas, keeping ambient concentrations of nitrogen dioxide level.

Another commenter stated that EPA should do an impact analysis to evaluate the impact of mobile source growth in urban Class II areas on adjacent Class I areas. The contributions of nitrogen oxides emissions from mobile sources to ambient nitrogen dioxide concentrations were analyzed by EPA for a high growth urban area during the development of the proposed regulations. This analysis indicated that mobile source contributions to ambient nitrogen dioxide concentrations have been decreasing in urban areas and should continue to decrease until the mid-1990's. With a baseline date set at February 8, 1988, this means that mobile source emission controls in urban Class II areas adjacent to Class I areas will, in most cases, result in an expansion of increment in Class I areas as well as in Class II areas. Should mobile source

emissions increase again after 1995, no adverse impact on Class I areas would be experienced unless the entire reduction in emissions after the baseline date is offset by new emissions.

One commenter stated that EPA should address the maintenance of ambient nitrogen dioxide levels in urban areas affected by mobile sources after 1994. This commenter pointed out that the expansion of the increment created by improved mobile source emission controls can be considered temporary, so EPA should rethink whether this reduction should be considered an increment expansion that is "available" for industrial expansion, or whether this temporary expansion of the increment should be ignored.

The EPA retains its rationale from the proposal that there may be several circumstances in which an area might experience a temporary expansion of the available increment. Those include production decreases resulting from economic conditions as well as improved emission control technologies, as is the case with mobile sources. In each of these instances, however, States must make decisions regarding the management of their air quality resources and the allocation of the increment. In this sense, the increment expansion from reductions in mobile source emissions is not different from other issues regarding the management of available increment. With these regulations, EPA does not propose to place constraints on how States choose to manage the increment. If, however, stationary sources are allowed by the State to consume the expanded portion of the increment and mobile source emissions do increase at some future date, the State will be required to make the adjustments necessary (e.g., controls on existing sources) to maintain future compliance with the increments.

F. Model Facilities

In the development of this regulation, hypothetical facilities were modeled to analyze the cost effectiveness of various controls and to project the emissions levels that could be anticipated from implementation of those controls.

Comments were received on the various analyses that EPA conducted to develop the proposed regulations. These comments compare hypothetical plants to actual plants and identify potential inconsistencies between them. In some instances, EPA has reevaluated its selection of model facilities, or performed additional analyses in response to the comments received.

Several commenters stated that the size of the model utility power plant

chosen for analysis is smaller than those that are typical of the electric utility industry. In the model facility analysis, EPA evaluated a 500 megawatt (MW) utility boiler, while the commenters assert that a typical utility boiler is in the 1000 to 2000 MW size range. These commenters expressed concern that the larger utility boiler could not comply with the proposed nitrogen dioxide increment requirement.

In response to this comment, EPA reexamined the selection of the model utility boiler evaluated in the development of the proposed increments. In examining 40 PSD permit applications for new coal-fired utility plants in the new source review (NSR) data base, only 2 of 72 individual boilers were found that were larger than 1000 MW in capacity. The other utility boilers in the NSR data base ranged from 300 to 800 MW in size, and averaged approximately 500 MW. The EPA assumption of 500 MW is also consistent with the typical power plant boiler analyzed by the Electric Power Research Institute, the Department of Energy (DOE), and the Tennessee Valley Authority. The DOE also projected that future utility boilers would typically be approximately 500 MW, based on projections submitted by the utility industry. Consequently, EPA believes that the selection of a 500 MW boiler is appropriate for the model utility boiler analysis.

The EPA's model facilities analysis indicates that a utility boiler in the 1000 MW size range would be able to comply with the increment requirements, except under the most adverse circumstances. Some of the commenters cited a table in the Technical Support Document (Volume I, Table 2) to support their contention that these facilities would violate the increment. It should be noted that the figures given in this table are for uncontrolled sources and do not include the effectiveness of emission controls that could be used to reduce these emissions. Although a 1000 MW utility boiler was not examined in the initial analysis, EPA considers it reasonable to expect that the technology required to meet a $25 \mu\text{g}/\text{m}^3$ increment on a 1000 MW boiler would be similar to that required to meet a $15 \mu\text{g}/\text{m}^3$ increment for a 500 MW utility boiler which was analyzed by EPA. Based on this assumption, there are demonstrated or developing control technologies (e.g., overfire air, "low- NO_x " burners, reburning, selective catalytic combustion, selective noncatalytic reduction) available for reducing nitrogen oxides emissions from utility boilers to these levels. Using these

technologies, the increment would be constraining on the operation of a 1000 MW utility boiler only if it was located in an urban area and under the most restrictive meteorological conditions used in EPA's analyses.

Several commenters stated that internal combustion (IC) engines in the model facility for gas compressor stations are not typical in either size or control technology. They claimed that typical natural gas compressor stations have multiple IC engines in the 800-1500 horsepower range, rather than the three 4500 horsepower IC engines used in the model plant. This error, they feel, would result in an underestimation of costs of controlling emissions from this type of source. One commenter stated that prestratified charge and nonselective catalytic reduction cannot be used on a 4500 horsepower (hp) gas compressor engine, as indicated in the model plant analysis, and that both prestratified charge combustion and nonselective catalytic reduction can only be used on smaller rich-burn engines.

In response to these comments, EPA reviewed the size of the IC engines selected for this model facility, as well as the control devices applied to each. First, it was found that the 4500 hp IC engines are more typical of gas compressor stations than the multiple, smaller IC engines mentioned by the commenter. Second, in designing new or modified compressor stations, applicants can comply with the increment through the use of larger IC engines, or by selecting stationary gas turbines which have negligible control cost impacts.

In order to examine the impact of the increment on the multiple small engines, the costs of precombustion modification controls were determined for smaller engines (i.e., 1000 hp) of equal aggregate capacity and compared to the costs for the same controls on the larger engines analyzed in the model facility analysis. This analysis shows the costs of control for the 1000 hp engines are 2 to 3 times the costs of control for the 4500 hp engines. In order to determine the significance of these increases in costs, their impacts on product prices were calculated. At the $25 \mu\text{g}/\text{m}^3$ increment level, the maximum projected product price was unchanged for compressor stations located in rural areas and increased to 1.2 percent in urban areas. Although greater than the 0.4 percent increase in product prices for the model facility reported in the original analysis, these product price impacts are still less than the 5 percent significance level used to classify regulatory actions as major. Moreover, they do not reflect

available mitigating measures that could dampen the cost increases and subsequent price effects.

For the 1000 hp engine, the costs of prestratified charge combustion were compared to the costs of precombustion modification. With prestratified charge control technology, the total annual costs and cost effectiveness are less than the costs for precombustion modification, due the decrease in fuel use associated with prestratified charge. Although this decrease in fuel use may not be present in all instances, it is clear that the costs of prestratified charge controls on a 1000 hp engine will be no greater than the cost for precombustion modification.

Finally, the EPA reviewed the applicability of prestratified charge combustion and nonselective catalytic reduction to larger rich-burn engines. The EPA agrees with the commenters that prestratified charge combustion is only used on small engines. The preamble and Technical Support Document prepared for the proposal of these regulations erroneously described the technology analyzed for larger IC engines (i.e., 4500 hp) as prestratified charge combustion. In fact, the actual technology analyzed was precombustion modification. Nonselective catalytic reduction, however, is offered by vendors on engines of up to at least 10,000 hp. Consequently, analysis of this technology as applied to the model 4500 hp IC engine was appropriate.

One commenter stated that surface mining operations were not considered in EPA's analyses of the potential impacts of the proposed increment. This commenter submitted an air quality analysis of a theoretical surface coal mine to support the contention that application of the Class I and Class II increments to surface mining presents potential compliance problems.

The EPA has reviewed the materials submitted by the commenter. This review revealed that certain assumptions in the commenter's analysis result in an apparent overestimation of the impacts of surface mining operations on consumption of the nitrogen dioxide increment. The information submitted by the commenter was based largely on emissions from diesel engines and relied on outdated emission factors. In addition, vehicle miles traveled by the diesel equipment used at the mine were very high when compared with previous EPA studies of actual surface mining operations.

Assuming more reasonable estimates and using currently available emission factors, EPA estimates that the nitrogen oxides emissions and the impacts on

ambient nitrogen dioxide concentrations would be approximately 12 percent of the values reported by the commenter. Although, in some instances, the EPA analysis indicates that the off-site impacts of the mining operation could exceed the increment, these impacts could be reduced below the increment level through the use of more advanced emission control technology on diesel engines or reconfiguration of sources within the facility to reduce off-site impacts (e.g., placing the main haul road farther from the property line). If located very close to a Class I area, such a source does have the potential to cause increment exceedances. However, the siting of surface mines close to Class I areas has in the past been constrained more by aesthetic and visibility issues than by increments such as those for particulate matter, and EPA believes that this will continue to be the case in the future.

G. Air Quality Modeling

Several commenters stated that EPA air quality models predict concentrations higher than would actually occur. The use of these models in the nitrogen dioxide increment determination, they feel, would result in faster apparent consumption of the increment.

The EPA believes the issue of model overprediction should be viewed in two parts: whether the EPA models overpredict when determining the impact of a nonreactive pollutant, and whether the models overpredict when determining nitrogen dioxide increment consumption. On the first issue, the EPA does not agree that models such as the industrial source complex (ISC) model overpredict when determining the impact of a nonreactive pollutant. In fact, the downwash algorithm was recently modified because studies have shown that the previous algorithm underpredicted concentrations for sources with short stacks. As to the second issue, EPA recommends a three-tiered screening model approach for determining nitrogen dioxide annual averages. The EPA agrees that the first level screening technique (assuming that all the nitrogen oxides are emitted as nitrogen dioxide) provides a high estimate of nitrogen dioxide ground level concentrations. There is no simple, accurate model for determining the rate of nitric oxide to nitrogen dioxide conversion. After the initial screen, if more accurate modeling results are needed, the ozone limiting method can be applied to the annual nitrogen dioxide estimate from point sources as a second level screen, or for each hour of the year as a third level screen. The

ozone limiting method is a simple method that attempts to take into account the conversion of nitric oxide to nitrogen dioxide in the atmosphere. Its use will result in a lowering of the modeled maximum ground level concentrations. Therefore, EPA feels that the choice between simple overpredictive models and more complex, but more accurate, models available to the source provides a solution in possible cases of overprediction.

One commenter provided an analysis to show the impact of the overpredictive character of the initial, first level screen. That analysis was not credible, however, because of the use of atypical emission parameters that were then modeled as though the releases occurred near the edge of the property boundary, thus greatly increasing the impact of these emissions. Also, the facility was modeled on the assumption that it operates on a 24-hour basis, thereby including a large number of stable and low wind speed conditions that result in higher ground level concentrations. These conditions are less likely to occur during the day. Until experience with these screening methods demonstrates otherwise, EPA will continue to recommend the three-tiered modeling approach for obtaining annual average estimates of nitrogen dioxide from point sources. On a case-by-case basis, however, EPA will consider other modeling techniques proposed by permit applicants to more accurately assess increment consumption.

Several commenters stated that EPA does not have sufficient guidance on modeling long-term concentrations from mobile sources. The commenters said that there is a lot of uncertainty associated with modeling nitrogen dioxide emissions from mobile sources with the industrial source complex long-term (ISCLT) model and are concerned that such modeling will substantially overestimate actual concentrations.

The ISCLT model is recommended for determining impacts from mobile source emissions when localized areas of high ambient nitrogen dioxide concentrations are expected, because it is the only long-term guideline model that can be used for these sources. An assessment of the performance of the ISCLT model for these applications is not now available. The ISCLT model will, of course, continue to be evaluated as experience is gained with these applications. For most urban area analyses, localized areas of high ambient nitrogen dioxide concentrations need not be considered, and mobile sources can be modeled as area sources using the climatological

dispersion model (CDM) as a guideline. For determining nitrogen dioxide increment consumption, these models overestimate impacts because they do not account for nitrogen dioxide chemical transformations. When combined with the ozone limiting method, however, these models will result in less overestimation of ground level nitrogen dioxide concentrations.

Several commenters said that existing models are inappropriate for reactive pollutants at extended distances from the source and for long-term periods modeling of reactive pollutants is complex and burdensome and, given the reactive nature of nitrogen dioxide, sophisticated photochemical transport and dispersion models are required for realistic analysis of increment consumption. The commenters conclude that EPA must address the long-range modeling issues for reactive pollutants before a standard such as the $2.5 \mu\text{g}/\text{m}^3$ Class I nitrogen dioxide increment can be implemented.

The EPA agrees with the commenters that models to account for the long-range transport of reactive pollutants, such as nitrogen dioxide, are not fully developed. The chemistry involved in the modeling of several merging and background sources emitting nitrogen oxides can become very complex, as can defining meteorological conditions over the distances and time scales associated with long-range transport. Thus, applying a long-range transport model can be a highly complex and very expensive undertaking. However, EPA neither recommends nor requires that applicants perform this type of analysis for the purpose of complying with air quality standards and increments.

Some commenters stated that there is insufficient guidance available for calculating long-term concentrations for point and area (i.e., mobile) sources in complex terrain, and that meteorological data needed to make the calculations are not readily available. In response, EPA notes that the simple screening techniques described in section 5 of the EPA modeling guideline can be used to determine long-term concentrations for point sources in complex terrain. Mobile sources in complex terrain can be modeled using the area source algorithm in the CDM or ISCLT models. The use of these techniques can be justified because plume rise from areawide mobile source emissions is negligible, significant impacts occur close to the source, and plume impaction on elevated terrain is considered insignificant on an annual basis. More complex situations can be modeled on a case-by-case basis.

It is true that meteorological data in areas with complex terrain are generally sparse. Modeling mobile source effects, as recommended by EPA, however, would be done primarily for areas of high traffic, such as urban areas. In such areas, meteorological data should be readily available. For other cases, preconstruction monitoring of meteorological parameters may be required.

A number of commenters felt that the Prudhoe Bay study conducted in conjunction with this rulemaking did not consider several important modeling issues. The EPA agrees that the Prudhoe Bay area is complex and difficult to model. The Prudhoe Bay model analysis used in this rulemaking, however, was based on existing modeling results presented by applicants in their permit applications, represents the modeling guidance for which permits were issued, and is considered acceptable for the purposes of the rulemaking analysis. No new modeling was performed.

A number of commenters said that the use of the model facility analysis in the technical support document to determine the effect of the increment did not consider three important factors: (1) Many facilities which emit nitrogen oxides are located in complex terrain, although the model facility analysis considered flat terrain impact only; (2) the potential for wide variability in the modeling results needs to be reviewed before any factual forecasts on impacts can be made; and (3) receptors closer than 200 meters from the source were not considered, which is inconsistent with EPA modeling guidance that uses receptors as close as three building heights from a stack.

The EPA's model facility analysis did not use a complex terrain model to determine the effect of the increment because it is difficult to define a "prototypical" complex terrain example that can be used as a substitute for the site-specific analysis required for most facilities located in complex terrain. Because of this, and cost and schedule constraints, the effect of complex terrain was approximated by doubling the maximum ground level concentrations derived from the ISCLT model (see Appendix B of the Technical Support Document, Vol II).

Second, the EPA's model facility analysis considered the variability in modeling results by using the input of 5 years of meteorological data from three National Weather Service (NWS) stations, located in three distinct climatic zones. Urban and rural dispersion parameters were also used to provide a range of conditions. Thus, a wide range of model impact conditions

was obtained. The commenter selected the station which showed the highest impact to determine the potential for growth in the commenter's regions. A more accurate method for assessment of growth would be to use a nearby NWS station in that region.

Finally, the EPA's model facility analysis assumed typical building layouts, stack heights, and emissions, based on the new source review data base. The distance to maximum concentrations varied by source type, year and location of meteorological data selected, and urban or rural classification. For the higher emitting utility boiler and gas turbine sources, the distance to maximum impact was beyond 200 meters. Therefore, 200 meters was chosen as a reasonable close-in receptor distance.

H. Costs

Commenters stated that EPA did not consider all of the costs involved in implementing the nitrogen oxides PSD regulations, such as: (1) Retrofit costs in areas where little increment is available; (2) costs of nitrogen oxides control for mobile sources; (3) the costs of controlling hazardous wastes or toxic emissions generated by nitrogen oxides control technologies; and (4) annualized cost impacts as current electric generation reserve capacities are used up and power plant construction programs increase.

The costs of retrofitting nitrogen oxides emission control technologies to existing sources were not considered by EPA in the development of the increment because such controls are not expected to be required because of the increment program. Rather, the program is structured to prevent increment violations in the first place. In theory, existing sources could be called upon to retrofit controls if an increment violation is discovered. In that case, the PSD regulations require that the State develop a plan to correct the violation. The decision on which sources would have to be controlled rests with the State. The possibility of an increment violation would have been much greater if a 1980 baseline date has been established. In any case, all new PSD sources will know before construction begins whether control technologies are needed to avoid increment violations. In addition, the costs of retrofitting controls to modified sources may be higher than for applying controls to new sources, but are not expected to be substantially higher than the costs of controls required by current BACT requirements for new sources.

Mobile source emission control costs were not included in this analysis

because mobile sources are not subject to permitting under new source review. The costs of mobile source emission controls are accounted for in the development of regulatory requirements directly applicable to motor vehicles.

The costs of controlling hazardous wastes generated by nitrogen oxide emission control technologies were included in the analysis of the model facilities. These costs included the costs of recycling or disposing of spent catalysts.

The estimates of the cost impact of this increment on the electric utility industry are based on assumptions which may overstate the plant incremental control costs as well as the number of plants subject to control. These assumptions result in high estimated cost impacts for a number of reasons. First, the cost impacts of the increment requirements were estimated as the increase in control costs over the BACT base-case requirements. The BACT levels chosen for the base case, however, were not based on those implemented by the States with the most stringent BACT determinations. Consequently, the analyzed cost differences between BACT and the increment program are potentially overstated.

Further, the estimates of growth in the electric utility industry were based on the growth rate for all PSD sources during the last few years. Eleven percent of the PSD permits in recent years have been for electric utility generating stations. Consequently, of the 250 PSD permits per year expected, based on past experience, for the period 1990-1994, 28 permits per year were assumed to be for utility electric generating stations. Based on historical plant distributions, these PSD permits would be expected to include 15 coal-fired boilers. This corresponds to a combined new capacity of 7500 MW per year, assuming a typical boiler size of 500 MW. Therefore, for the 5-year period 1990-1994, a total of 75 coal-fired utilities with 37,500 MW of new capacity were projected by the EPA study. In contrast, the electric utility industry has projected an increase in coal-fired plant capacity of only 8600 MW during this 5-year period (see U.S. Department of Energy Information Administration, Inventory of Power Plants, 1986). Thus, EPA's analysis has likely overestimated the number of coal-fired steam electric utility facilities expected to be constructed during the time period studied, as well as the total capacity of these facilities.

One commenter used cost impact arguments to advocate nitrogen dioxide

increments that are no less than 45 percent of the NAAQS. The cost impacts of the proposed increments are alleged to: (1) Possibly preclude full development at a reasonable cost for lignite-based electricity generation; (2) result in pass-through of control costs from electricity purchased to consumers of products which use lignite-based electricity as a production input; and (3) affect the ability of firms to compete in foreign markets and, hence, affect the United States' balance of trade.

Promulgation of the proposed PSD increments will not preclude full development of lignite-based electricity generation. Moreover, the added costs of the promulgated increments should reflect the fact that the use of the air resource is not free and should be included in the costs of providing electricity.

One commenter believed the focus of the economic impact analyses should be the competitiveness of the industries affected by the regulation, not price impacts. The commenter also believed a regulatory impact analysis (RIA) may be in order as a result of a comparative analysis showing selective catalytic reduction to have 60 percent greater capital costs than noted in the proposal preamble.

Regarding the focus of the economic impact analysis, most such analyses begin with the potential cost increase. The decision to extend these estimates to examine the distributive consequences of a regulation is a function of the size of the potential cost increase and the requirements for more extensive analysis. The EPA economic impact analysis showed the potential cost increase, both as a percent of product prices and as an absolute annualized cost estimate, to be relatively small and to not warrant an RIA. Thus, the economic impact analysis was not extended to examine distributive effects like competitiveness.

With respect to the need for an RIA, the commenter's comparative cost analysis focuses on retrofit situations with selective catalytic reduction as the control technique. As noted in the response to previous commenters, the retrofit focus is not appropriate. Furthermore, techniques less costly than selective catalytic reduction are often available. Consequently, EPA maintains that an RIA is not required.

Some commenters stated that a price increase of less than 5 percent could be significant to the affected industry. The EPA agrees that potential production cost increases may be important. The ones associated with this regulation, however, are not significant. Both the absolute and the relative sizes of the

estimated production cost increases are such that the regulatory action is not classified as major. In particular, for all affected industries estimated, the worst-case fifth year annualized cost increases total less than \$64 million in the aggregate. This estimate is on the high side because it does not account for available, less costly control options.

Several commenters, albeit none of them representing State agencies, stated that the cost to the States of administering the program has been underestimated. The costs to State agencies of administering the nitrogen dioxide increment program (\$135,000 per year) were calculated by EPA as the incremental cost of examining each applicant's compliance with the nitrogen dioxide increment regulation. Since most sources subject to the PSD regulations for nitrogen oxides are also expected to be subject to the increment requirements for particulate matter and/or sulfur dioxide, the incremental administration costs of implementing the nitrogen dioxide increment requirements should be relatively minor. Using the \$135,000 per year cost estimate to calculate average costs per State (about \$3,000 per year) is misleading because many States receive no PSD applications for years at a time and would therefore incur no administrative costs for that period.

One commenter's estimate of administrative costs of \$10,000,000 per year cannot be effectively evaluated, since the commenter provided no information on the derivation of this figure. However, this estimate is not consistent with EPA's estimate of the costs of administering this increment program.

One commenter said the estimated total national costs to applicants of \$400,000 per year is too low for all the time, paperwork, and delays associated with compliance with this regulation. In response to this comment, EPA has reexamined the administrative burden of the increment requirements. In the development of these costs, EPA assumed that 16 hours would be required for the nitrogen dioxide increment consumption analysis associated with each PSD permit application. On reexamination, EPA agrees with the commenter that this is an underestimate based on the inclusion of mobile sources in the analysis. A more accurate estimate of the time typically required for this process was determined to be 60 hours for each application for which a mobile source emissions analysis was needed. The actual hours may be more or less than this estimate, depending on the complexity of the sources and the nature

of the area in which the source is located. Based on this revised estimate, it was projected that the total national administrative costs of this regulation to permit applicants will be approximately \$855,000 per year, rather than the initial estimate of \$400,000 per year.

I. Restrictions on Siting

Several commenters stated that the increment would prevent utility boilers from being constructed near urban areas where they would take advantage of available water supplies and wastewater treatment capacity. The EPA analysis indicated that, for utility power plants located in urban areas, there are control technologies available that will enable these sources to comply with the increment requirements in Class II areas under most anticipated meteorological conditions. It is possible, however, that adverse meteorological patterns or terrain associated with specific sites could make it difficult for a source to comply with the nitrogen dioxide increment, whether that source is a utility boiler or any other nitrogen oxides emissions source (utility boilers would be more likely, however, to have this problem with the short-term sulfur dioxide increments, which have been in effect since 1975, than with the annual nitrogen dioxide increments). This is a possible outcome of any increment system established and is part of the PSD approach to air quality management. In such a case, the source owner would have to review and consider other options available for the siting and design of the source.

One commenter took exception to the EPA claim that the increment will not pose severe constraints on the siting of chemical plants because large new chemical plants are not expected to locate near urban areas. He pointed to the location of many chemical plants at shipping centers near urban areas as contradicting this statement.

The EPA found that the Class II increment of 25 ug/m³ could impose constraints on the location of large chemical plants in urban areas, but only under adverse meteorological conditions, and only if the chemical plants include significant emissions from kilns, such as those considered in the model facility analysis. Large chemical facilities seeking to locate in urban areas having more moderate meteorological conditions, or having a different configuration of driers, kilns, process heaters, and other nitrogen oxides emissions sources, would be expected to be less constrained by the Class II increment.

It is more likely that chemical manufacturing companies would seek to expand or modify existing facilities in urban areas. In such an instance, the decisions on the siting and design of the modified facility made by the owner or operator of the source could be affected by the increment requirements. As discussed above, this is a possible outcome inherent in the design of the PSD program. It is EPA's conclusion, however, that only in those cases where previous increment consumption has been significant will the increment severely constrain the siting of modification of an industrial facility when compared to other factors, such as the availability of transportation, financing, raw materials, and labor.

One commenter stated that the proposed increments may severely constrain economic growth in rural areas, irrespective of the actual threat to air quality in those areas. The commenter stated that rural Class II areas should be managed differently from urban Class II areas so that the dispersal of growth is encouraged.

In establishing the PSD program, Congress did not distinguish between urban and rural Class II areas, either in terms of the increments for particulate matter and sulfur dioxide or any other aspects of air quality management. The EPA used similar logic when setting the same nitrogen dioxide increments for rural and urban Class II areas. The EPA analyses show that one possible effect of the increment will be the dispersal of industrial growth. Because industrial growth will generally be more rapid in or near urban areas, it is anticipated that any constraints on the siting of industrial facilities resulting from the imposition of an increment would be realized in urban areas first. As a consequence, the increments will create an incentive for the location of industrial facilities outside of urban areas and into rural areas where the increment has not been consumed. This is currently the case for sulfur dioxide and particulate matter. For nitrogen dioxide, emissions reductions from mobile sources are expected to delay this effect. The increments are not, of course, the sole factor shaping decisions about the siting and design of industrial facilities. The EPA expects the nitrogen dioxide increments to accommodate siting of new or modified sources in Class II areas in almost all cases.

J. Ozone

A number of commenters stated that EPA should analyze more thoroughly the relationship between nitrogen dioxide and ozone, the impact of the nitrogen dioxide increments on ozone formation,

the potential for acid rain formation, and other environmental issues (e.g., visibility degradation, vegetation damage).

Recognizing that there can be an inverse relationship between ambient nitrogen dioxide levels and ozone levels, a number of commenters said nitrogen dioxide increments should not be applied in ozone nonattainment areas in order to avoid worsening the ozone problems in those areas. One commenter said a nitrogen dioxide increment should be required in an area only if it can be shown that a decrease in ambient nitrogen dioxide will lead to a decrease in ozone levels. Another commenter noted that because of its role in the formation of ozone, nitrogen oxides emissions from new sources are already being reduced to the maximum extent in his area.

The EPA believes it is important to understand that the nitrogen dioxide increments will not reduce current nitrogen dioxide concentrations, but instead place a limit on increases in ambient nitrogen dioxide concentrations. Since it is possible that limiting increases in ambient nitrogen dioxide can also limit reductions in ozone concentrations, EPA conducted an analyses to determine the potential for all of the Class II nitrogen dioxide increment to be consumed in selected urban areas with ozone violations. The objective of the analysis was to assess whether a less stringent increment would be needed to allow (in certain areas) for ozone reduction by increasing nitrogen dioxide availability in the atmosphere. This analysis indicated that all of the proposed Class II nitrogen dioxide increment of $25 \mu\text{g}/\text{m}^3$ (annual average) would not be consumed in the urban areas studied, even when emissions growth was projected to the year 2010 using the growth assumptions believed to be most realistic. Consequently, it is not necessary to give further consideration to a less stringent increment on this basis. The analysis has been included in this rulemaking docket.

K. Baseline Date

Comments were solicited on the proposed baseline date of February 8, 1988, and on two alternatives. One of these alternatives was a 1980 baseline date, the date Congress expected the PSD regulations for nitrogen oxides to become effective. Some commenters claimed that a baseline date of 1980 is necessary in order to address the deterioration in air quality that has taken place due to increases in nitrogen oxides emissions since 1980. One commenter pointed out that, although

selection of a 1980 baseline date may result in some areas currently being in violation of the increment, these problems can be addressed through the use of the Class II designation.

A 1980 baseline date could affect Class I and some Class II areas differently. As discussed earlier in this notice, the first complete PSD permit application for a major new source or a major modification received after the trigger date establishes the minor source baseline date and the baseline concentration. Once the baseline concentration is set, minor (including mobile) sources can consume or expand increment. As discussed in the proposed rulemaking at 53 FR 3706, for urban Class II areas in which major source permits have been received since 1980, selection of a 1980 baseline date could result in the setting of a higher baseline concentration and, consequently, a higher nitrogen dioxide concentration limit (baseline plus increment) that would be the case for a 1988 baseline date. The EPA urban analysis indicates that, for many urban areas, the decrease in mobile source nitrogen oxides emissions since 1980 has exceeded increases in stationary source nitrogen oxides for the same period. Thus, mobile source emissions reductions either expand the available increment, if the minor source baseline date (and hence the baseline concentration) has been set, or reduce the baseline nitrogen dioxide concentration if it has not. For most rural areas, the major source baseline date and trigger date selections should have little impact. In Class I areas, a studies of the impact of a 1980 baseline indicate that the maximum degradation in Class I areas since 1980 has been less than $1 \mu\text{g}/\text{m}^3$.

The EPA agrees that redesignation from Class II to Class III is a possibility for those areas which find themselves in violation of the Class II increment because of a retroactive regulation. However, redesignation to Class III was intended as an avenue for those areas which wish to make the conscious decision to allow more future growth than would be permitted under a Class II increment—not as a remedy where a Class II increment has been (albeit unintentionally) exceeded by the setting of a baseline with a retroactive 1980 date.

On the other hand, several commenters supported the proposed 1988 baseline date, repeating many of the arguments in the preamble to the proposed regulations (53 FR 3705). For example, several commenters pointed out the practical problems with the use of a 1980 baseline date, which would

require the reconstruction of data on the ambient concentration of nitrogen dioxide and emissions of nitrogen oxides in a PSD area as of 1980. They stated that this information may no longer be available, or be difficult to obtain and analyze. Further, the consumption of increment since 1980 would also have to be based on available records of permits and emissions, which may not be complete. The EPA agrees with these commenters that a 1980 baseline date could present severe technical and administrative difficulties. In addition, although it is unlikely, the available historical records may show that some areas would already be in violation of the increment at the time of promulgation as the result of emissions growth since 1980. Such violations may require retrofit emissions control technologies to be applied to existing sources in order to bring the area into compliance with the increment. Requiring sources to retrofit emission control devices raises several concerns. First of all, it obviously would be very unfair. The EPA has had BACT requirements for NO_x emitters since before 1980. Sources based emission control system decisions on these regulations. A retrofit requirement could essentially undercut the emission control efforts already undertaken. In addition, this retrofitting goes against the grain of the general thrust of the congressional PSD program, namely, that it apply, insofar as new major sources and major modifications are concerned, prospectively and not retrospectively.

Several commenters stated that the baseline date should be the promulgation date or the effective date of the regulation. The rationale, for this recommendation was that the later baseline date would allow States and permit applicants more time to make an orderly transition into the increment program than would the February 1988 baseline.

The EPA does not believe that the February 1988 baseline date poses significant administrative difficulties for State agencies in implementing the inventory and increment requirements of the regulation. States have been aware of the nitrogen dioxide increments since the date of proposal. Although many commenters from industry suggested that this process would be time consuming, it is important to note that comments from the State agencies themselves have not questioned their ability to implement and administer an increment program for nitrogen dioxide based on a February 8, 1988 baseline date.

Setting the baseline date at the date of proposal will prevent the owners or operators of prospective new sources from attempting to avoid the increment requirements by submitting permit applications early. This situation usually occurs when a prospective baseline date is selected. Not only would such action result in some sources not being covered by the program, but dealing with this influx of new source applications would hinder the State agencies in their effort to implement this program and construct emissions inventories.

The EPA believes that the February 8, 1988 baseline represents the best accommodation of the pros and cons provided by the various choices. The EPA has concluded that this baseline is practical, both technically and administratively. A prospective baseline date would encourage early application and may provide inadequate environmental protection. Conversely, a retroactive baseline date would be very difficult to implement and would provide no clear environmental benefit because, as explained above, it would expand the available increment in some areas and contract it in others. In addition, it would present the possibility of requiring retrofitting of pollution control equipment, which, in keeping with congressional intent, the PSD program has historically sought to avoid.

L. Emissions Banking

A few commenters expressed their concern about the apparent elimination of the emissions banking system, because the establishment of a nitrogen dioxide increment would exclude previously banked nitrogen oxides emissions credits created by industries for their future expansion. To some extent, this concern is valid. Today's action does limit the use of banked nitrogen oxides emission reduction credits (ERC's) for netting to those ERC's which would affect the nitrogen dioxide increment. This restriction is already included in the definition of "net emissions increases" in determining whether emissions of sulfur dioxide and particulate matter are creditable. The EPA believes that it is appropriate to apply similar restrictions to nitrogen oxides netting transactions to comply with the actual emissions concept in section 169, paragraph (4), of the Act, as described above. Furthermore, EPA wishes to continue its policy of treating all ERC's the same within the new source review (including PSD) program. This means that banked ERC's receive no special consideration in netting transactions over any other ERC's. Banked ERC's must meet all the same

requirements as ERC's that are not banked.

M. Administration

Two commenters stated that the proposed nitrogen dioxide increment would place a large burden on the State agencies charged with the responsibility for administering the program. One claim that, for that local agency, the establishment of a nitrogen dioxide increment would result in a large increase in work load without a significant benefit in local air quality, because of the stringency of their existing BACT program. That agency also predicted that detailed increment consumption analysis will become a routine requirement because projects with nitrogen oxides emissions greater than 40 tons/year will probably exceed the significant impact level. The other commenter stated that the nitrogen oxides regulations will be even more difficult to administer and manage than sulfur dioxide or particulate matter increments, which, this commenter claimed, States have been unsuccessful in implementing to date.

The EPA agrees that the increment program for nitrogen dioxide will result in an increase in the States' work loads, since a new pollutant is being added to the increment consumption analysis. The added work load should be relatively small, however, because the nitrogen dioxide increment consumption analysis can be based on existing administrative structures. The only change to the modeling review procedures will be the need for separate reviews of the baseline concentration and increment consumption data, and verification that the increment has not been exceeded. The ability of State and local agencies to administer this program is evidenced by the fact that only one of the State and local agencies commenting on this regulation expressed concern that they would not be able to administer this program.

IV. Administrative

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is intended to allow the public to identify and locate documents so they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated regulations and EPA responses to significant comments, the contents of the docket, except for intra-agency review materials, will serve

as the record in case of judicial review (see section 307(d)(7)(A) of the Act).

Under section 307(b)(1) of the Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 2501 *et seq.* and have been assigned OMB Control Number 2060-0003. The public reporting burden for this collection of information is estimated to vary from 1 to 1000 hours per response, with an average of 60 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Reporting time per respondent will increase slightly as a result of this action. The increase per respondent, however, is insignificant on the average.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Economic Impact Assessment

Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any regulations under Part C of Title I (relating to PSD of air quality). An economic impact assessment was prepared for the PSD increments for nitrogen dioxide promulgated today. The economic impact assessment is included in Docket A-87-16.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have significant economic impact on a substantial number of small business entities (see 46 FR 8709).

List of Subjects

40 CFR Part 51

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Nitrogen dioxide, State implementation plans.

40 CFR Part 52

Air pollution control, Nitrogen dioxide.

Date: October 7, 1988.
Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Parts 51 and 52 of Chapter 1 of Title 40 of the Code of Federal Regulations are amended as set forth below:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160-169, 171-178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a).

2. In § 51.166, paragraphs (b)(3)(iv), (b)(13)(i), (b)(13)(ii)(a), (b)(13)(ii)(b) and (b)(14)(i) are revised; paragraph (b)(14)(ii) is redesignated as paragraph (b)(14)(iii) and a new paragraph (b)(14)(ii) is added; paragraphs (b)(15)(i), (b)(15)(ii)(a), (f)(1)(v), (f)(4)(i), the last sentence of paragraphs (p)(4) and the tables in paragraphs (c) and (p)(4) are revised; and paragraph (j)(11) and the OMB control number are added to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(b) ***

(3) ***

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section;

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) ***

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(14)(i) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) ***

(a) Establishes a minor source baseline date; or

(c) ***

Pollutant	Maximum allowable increase (micrograms per cubic meter)
CLASS I	
Particulate matter:	
TSP, annual geometric mean.....	5
TSP, 24-hr maximum.....	10

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
CLASS II	
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
CLASS III	
Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hr maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

application as submitted before that date was complete.

(p) * * *

(4) * * * If the Federal land manager concurs with such demonstration and so certifies to the State, the reviewing authority may: *Provided*, That applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

(Approved by Office of Management and Budget under the control number 2060-0003)

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. In § 52.21, paragraphs (b)(3)(iv), (b)(13)(i), (b)(13)(ii)(a), (b)(13)(ii)(b) and (b)(14)(i) are revised; paragraph (b)(14)(ii) is redesignated as paragraph (b)(14)(iii) and a new paragraph (b)(14)(ii) is added; paragraphs (b)(15)(i), (b)(15)(ii)(a), (f)(1)(v), (f)(4)(i), the last sentence of paragraph (p)(5) and the tables in paragraphs (c) and (p)(5) are revised and paragraph (i)(12) and the OMB control number are added to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating

the amount of maximum allowable increases remaining available.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section;

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(ii) * * *

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(14)(i) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1) (D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) * * *

(a) Establishes a minor source baseline date; or

(c) * * *

(f) * * *

(1) * * *

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4) of this section.

(4) * * *

(i) Specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator.

(i) * * *

(11) The plan may provide that the permitting requirements equivalent to those contained in paragraph (k)(2) of this section do not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved or promulgated under the Act before the provisions embodying the maximum allowable increase took effect as part of the plan and the permitting authority subsequently determined that the

Pollutant	Maximum allowable increase (micrograms per cubic meter)
CLASS I	
Particulate matter:	
TSP, annual geometric mean	5
TSP, 24-hr maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide: Annual arithmetic mean	2.5
CLASS II	
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide: Annual arithmetic mean	25
CLASS III	
Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hr maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide: Annual arithmetic mean	50

(f) * * *

(1) * * *

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4) of this section.

(4) * * *

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator;

(i) * * *

(12) The requirements of paragraph (k)(2) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Administrator subsequently determined that the application as submitted before that date was complete.

(p) * * *

(5) * * * If the Federal land manager concurs with such demonstration and he so certifies, the State may authorize the Administrator: *Provided*, That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

(Approved by Office of Management and Budget under the control number 2060-0003.)
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Federal Register

**Monday
October 17 1988**

Part VIII

Department of Labor

Pension and Welfare Benefits Administration

**29 CFR Parts 2560 and 2570
Employee Retirement Income;
Assessment of Civil Penalties and
Procedures for Administrative Hearings;
Notices of Proposed Rulemaking**

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2560****Employee Retirement Income; Assessment of Civil Penalties**

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that describes procedures relating to the assessment of civil penalties under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA, or the Act). Section 502(c)(2) authorizes the Secretary of Labor (the Secretary) to assess a civil penalty of up to \$1000 a day against a plan administrator who fails or refuses to file the annual report on behalf of an employee benefit plan required under section 101(b)(4) of the Act. The proposed regulation would clarify the manner in which the Department will assess penalties under ERISA section 502(c)(2) and the procedures for agency review. A separate document containing a proposed regulation relating to procedures for hearings before an administrative law judge, and appeals, on assessments of penalties under ERISA section 502(c)(2) is also being published in today's *Federal Register*.

DATES: Written comments concerning the proposed regulation must be received by November 16, 1988. If adopted, the regulation would be effective with respect to annual reports required to be filed for plan years beginning on or after January 1, 1988.

ADDRESSES: Written comments on the proposed regulation (preferably three copies) should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* "Proposed 502(c)(2) Regulation". All submissions will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210, or Linda N. Winter, Plan Benefits Security Division, Office of the

Solicitor, (202) 523-9596, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: This document contains a proposed regulation which provides guidance relating to the assessment of civil penalties under section 502(c)(2) of ERISA for the failure or refusal to file the annual report

A. Background

Section 502(c)(2) provides that the Secretary may assess a civil penalty of up to \$1000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed under section 101(b)(4).¹ ERISA section 101(b)(4) requires the administrator of an employee benefit plan to file an annual report containing the information required by section 103. Section 103 of ERISA and the Department's regulations thereunder (29 CFR 2520.103-1 *et seq.*) describe the content of the annual report.

Section 502(c)(2) also provides that an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary. ERISA section 104(a)(4) provides, in relevant part, that the Secretary may reject any filing upon determining that such filing is incomplete. Section 104(a)(5) describes various remedies available to the Secretary where a filing is rejected and a revised filing satisfactory to the Secretary is not submitted within 45 days.²

In the Department's view, the section 502(c)(2) sanction is a valuable additional enforcement tool which is necessary to ensure compliance with ERISA's annual reporting requirements. The annual report is the principal source of information and data available to the Department concerning the operations of over 900,000 employee benefit plans, covering an estimated 58 million participants and beneficiaries and managing assets estimated at \$1.4 trillion. The annual report also serves as the primary means by which the operations of plans can be monitored by participants, beneficiaries and the general public. Thus, the Department is proposing this proposed regulation and,

in a separate document, a proposed regulation relating to procedures for hearings before an administrative law judge, and appeals, on assessments of penalties under ERISA section 502(c)(2).³

In general, proposed regulation § 2560.502c-2, discussed in detail below, addresses: the circumstances under which a penalty might be assessed (§ 2560.502c-2(a)); factors considered by the Department in determining the amount of a penalty (§ 2560.502c-2(b)); the provision of notice to the administrator of the Department's intention to assess a penalty (§ 2560.502c-2(c)); waiver of all or part of the penalty by the Department upon a showing of reasonable cause and the requirements relating to a showing of reasonable cause (§ 2560.502c-2(d) and (e)); the effect of a failure to file a statement of reasonable cause (§ 2560.502c-2(f)); the provision of notice to the administrator of the Department's findings as to reasonable cause and the effect of such notice where a penalty is to be assessed (§ 2560.502c-2(g)); the effect of a request for a hearing before an administrative law judge (§ 2560.502c-2(h)); service of notices (§ 2560.502c-2(i)); and the liability of the administrator for assessed penalties (§ 2560.502c-2(j)).

In general, the assessment of penalties under section 502(c)(2) and proposed regulation § 2560.502c-2 would occur only in those instances where there is a failure or refusal to file any annual report within the prescribed time frames⁴ or, subsequent to notification that the report has been rejected and the reasons therefor, a failure or refusal to file a corrected report within the 45 day period prescribed in section 104(a)(5). Accordingly, in the case of a report rejected under section 104(a)(4), the administrator can avoid the assessment of any penalty under 502(c)(2) by making the necessary corrections to the filing within the prescribed time frame. Moreover, as reflected in the proposed regulation, penalties may be waived, in whole or in part, upon the administrator's showing of reasonable cause for the failure to file a complete report.

¹ Section 502(c)(2) was added to ERISA by section 9342(c)(2) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987, Pub. L. 100-203).

² Under section 104(a)(5), the Secretary may, in addition to engaging an independent qualified public accountant or an enrolled actuary, bring a civil action for appropriate legal or equitable relief or take any other action authorized by Title I of ERISA, e.g., the assessment of a civil penalty under section 502(c)(2).

³ Section 9342(d)(2) of OBRA 1987 provides that the Secretary of Labor shall issue regulations required to carry out the amendments by subsection (c) not later than January 1, 1989.

⁴ ERISA section 104(a)(4) provides that the annual report described in section 103 is required to be filed within 210 days after the close of the plan year. However, an extension of time to file the annual report may be granted by the Internal Revenue Service (*See: Instructions to the Form 5500 Series*).

B. Discussion of Proposed Regulation

1. *Scope.* Proposed § 2560.502c-2(a) addresses the general application of section 502(c)(2). Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), is liable for the penalties assessed under section 502(c)(2) in each case in which there is a failure or refusal to file the annual report on behalf of an employee benefit plan subject to the annual reporting requirements. Accordingly, in those instances where a person serves as the administrator of more than one employee benefit plan, separate penalties may be assessed with respect to each plan report for which there is a failure or refusal to file the annual report. Paragraph (a)(2) defines a failure or refusal to file the annual report as a failure or refusal to file, in whole or in part, that information described in ERISA section 103 and § 2520.103-1, *et seq.*, at the time and in the manner prescribed for such filings.

2. *Amount Assessed.* Proposed § 2560.502c-2(b)(1) provides that the Department shall take into account the degree and willfulness of the failure to file the annual report in determining the amount to be assessed under section 502(c)(2). Consistent with the terms of section 502(c)(2), paragraph (b)(1) provides that the penalty assessed by the Department shall not exceed \$1000 a day. With regard to the period for which a penalty may be assessed, paragraph (b)(1) provides that the penalty will be computed from the date of the administrator's failure or refusal to file the annual report and continue up to the date on which an annual report satisfactory to the Secretary is filed. Accordingly while the Department might assess a penalty for interim periods of noncompliance, liability for penalties under section 502(c)(2) would continue for each day up to the date compliance is achieved. However, under paragraph (b)(2), the Department is proposing to toll the daily penalty in the following circumstances. As procedurally described below, in those cases where upon receipt of a notice of intent to assess a penalty (as described in paragraph (c)) the administrator files a statement with the Department concerning reasonable cause for the failure (as described in paragraph (e)), no liability for penalties will incur for any day starting from the date the Department serves the administrator a copy of the notice to assess a penalty until the day after the Department issues the notice of determination on the statement of reasonable cause (as described in paragraph (g)). This limited tolling of penalty will permit plan

administrators to present to the Department arguments concerning any reasonable cause for the failure to file without continuing to incur penalties for failure to correct.

Paragraph (b)(3) defines the date on which an administrator failed or refused to file the annual report as the date on which the annual report was due. In this regard, paragraph (b)(3), like section 502(c)(2) of the Act, provides that an annual report which is rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file the annual report. For purposes of this provision, material information would be any information required to be included on, or as part of, the annual report which is necessary to process, verify or analyze an annual report.

It is the view of the Department that in those situations where an extension of time is granted for the filing of the annual report and the administrator fails either to file a timely report or a complete report within the extension period, the administrator should not, for purposes of the 502(c)(2) penalty, benefit from the requested extension. Accordingly, for purposes of paragraph (b)(3) the date on which the annual report was due is determined without regard to any extension of time granted for the filing of the report.

3. *Notice of Penalty.* Proposed § 2560.502c-2(c) provides that, prior to the assessment of any penalty under section 502(c)(2), the Department shall provide the administrator with a written notice indicating the Department's intention to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reasons for the penalty. This notice would be served in accordance with the service of notice provisions of § 2560.502c-2(i) of the proposed regulation. Under § 2560.502c-2(f) of the proposed regulation, this notice will become a final order of the Secretary, within the meaning of § 2570.61(g) (See: proposed regulation § 2570.60 *et seq.* also appearing in today's Federal Register), within 30 days of the service of notice, unless the statement of reasonable cause, described in § 2560.502c-2(e), is filed with the Department.

4. *Waiver of Penalty.* Paragraphs (d), (e), (f), (g) and (h) of the proposed § 2560.502c-2 generally relate to the waiver of penalties under section 502(c)(2). Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(2) upon a showing of reasonable cause for the failure to file the annual

report. Paragraph (e) provides that, subsequent to the issuance of a notice of the Department's intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice to make an affirmative showing of reasonable cause for the failure to file a complete annual report or why the penalty, as calculated, should not be assessed. Paragraph (e) requires that the statement be in the form of a written statement which sets forth all the facts alleged in support of reasonable cause and contains a declaration that the statement is made under penalties of perjury.

Paragraph (f) describes the effect of a failure to file the statement of reasonable cause within the prescribed 30 day period. Paragraph (f) provides that a failure on the part of the administrator to file a timely statement of reasonable cause will constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(2). Under paragraph (f), the Department's notice of intent to assess a penalty, described in paragraph (c), then becomes a final order of the Secretary, within the meaning of paragraph (g) of proposed regulation § 2570.61 (See: Proposed regulation § 2570.60 *et seq.* published in today's Federal Register).

Paragraph (g)(1) provides that, following a review of the facts alleged in the statement of reasonable cause, the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of the service of the notice, except as provided in paragraph (h). In general, paragraph (h) provides that the notice described in paragraph (g) shall not become a final order if, within the 30 days of the date of service of notice, the administrator initiates an adjudicatory proceeding under section 18 of Title 29, as modified by the proposed 502(c)(2) procedural regulations (§ 2570.60 *et seq.*) also published in today's Federal Register. Specifically, the administrator would be required to file, within 30 days of the date of the service of notice, an answer, as defined in proposed § 2570.61(c), in accordance with proposed § 2570.62.

5. *Service of Notices.* Proposed § 2560.502c-2(i) describes the manner in which the notice of intent to assess a

penalty, described in paragraph (c), and the notice of determination on a statement of reasonable cause, described in paragraph (g), will be served. Under paragraph (i) of the proposed regulation service of notice shall be made either: (1) By delivering a copy to the administrator or representative; (2) by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or (3) by mailing a copy of the last known address of the administrator or representative thereof.

6. *Liability.* Proposed § 2560.502c-2(j) is intended to clarify the liability of the parties for penalties assessed under section 502(c)(2). Paragraph (1) provides that, if more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provides that any person against whom a penalty is assessed under section 502(c)(2) is personally liable for the payment of such penalty. Paragraph (2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(2) is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. Accordingly, the payment of penalties assessed under section 502(c)(2) from assets of a plan would not constitute a reasonable expense of administering the plan for purposes of ERISA sections 403 and 404.

7. *Effective Date.* Pursuant to section 9342(d)(1) of the Omnibus Budget Reconciliation Act of 1987, the civil penalty provisions of section 502(c)(2) apply with respect to reports required to be filed after December 31, 1987. The Department interprets this effective date provision to refer to annual reports required to be filed for plan years beginning after December 31, 1987, rather than the 1987 plan year annual reports filed in 1988. Accordingly, the regulation contained in this notice would, upon adoption, be effective with respect to annual reports to be filed for plan years beginning on after January 1, 1988.

Executive Order 12291 Statement

The Department has determined that the proposed regulation would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in annual effect on the economy of \$100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

The proposed regulation would not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the regulation is to clarify the manner in which penalties under section 502(c)(2) of ERISA will be assessed by the Department for a failure or refusal to file the annual report in accordance with the statutory and regulatory annual reporting requirements. In the cases where a deficient report is filed, plan administrators will be afforded the opportunity to correct the deficiencies prior to the assessment of any penalty. In addition, in all cases in which the Department intends to assess a penalty, the penalty may be waived, in whole or in part, upon a showing of reasonable cause for the failure to comply. In view of the potentially limited circumstances under which penalties might be assessed pursuant to this regulation, the Department believes that, if adopted, the proposed regulation will not have a significant impact on small employee benefit plans or substantially affect small entities which provide services to such plans.

Paperwork Reduction Act

The proposed regulation relating to the assessment of civil penalties under ERISA section 502(c)(2) does not contain any new information collection requirements and does not modify any existing requirements. Thus, the proposed regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Statutory Authority

The proposed regulation set forth herein is issued pursuant to the authority contained in section 502(c)(2) and 505 of ERISA (Pub. L. 93-406, 88 Stat. 892, 894; 29 USC 1132(c)(2), 1135).

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

Proposed Regulation

In view of the foregoing, the Department proposes to amend Part 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2560—[AMENDED]

1. By revising the authority citation for Part 2560 to read as set forth below:

Authority: Section 502(b)(2), 502(c)(2), 502(i) and 503 of ERISA, 29 U.S.C. 1132(b)(2), 1132(c)(2), 1132(i), 1133, 1135, 1022, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

2. By adding a new § 2560.502c-2 in the appropriate place to read as follows:

§ 2560.502c-2 Civil Penalties Under Section 502(c)(2)

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)) of an employee benefit plan (within the meaning of section 3(3) and § 2510.3-1, *et seq.*) for which an annual report is required to be filed under section 101(b)(4) shall be liable for civil penalties assessed by the Secretary under section 502(c)(2) of the Act in each case in which there is a failure or refusal to file the annual report required to be filed under section 101(b)(4).

(2) For purposes of this section, a failure or refusal to file the annual report required to be filed under section 101(b)(4) shall mean a failure or refusal to file, in whole or in part, that information described in section 103 and § 2520.103-1, *et seq.*, on behalf of the plan at the time and in the manner prescribed therefor.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(2) shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure to file the annual report. However, the amount assessed under section 502(c)(2) of the Act shall not exceed \$1000 a day, computed from the date of the administrator's failure or refusal to file the annual report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which an annual report satisfactory to the Secretary is filed.

(2) If upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section) the administrator makes an affirmative showing of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed

or refused to file the annual report shall be the date on which the annual report was due (determined without regard to any extension for filing). An annual report which is rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file an annual report.

A penalty shall not be assessed under section 502(c)(2) for any day earlier than the day after the date of an administrator's failure or refusal to file the annual report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(2), the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(2), the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(2) on a showing by the administrator that there was reasonable cause for the failure to file the annual report.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of notice, as described in paragraph (i) of this section, to make an affirmative showing of reasonable cause for the failure to file a complete annual report or why the penalty, as calculated, should not be assessed. An affirmative showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g).

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all

the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to this paragraph indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.61(g), 30 days after the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.61(g), if, within 30 days from the date of service of the notice, an answer, as defined in § 2570.61(c), is filed in accordance with § 2570.62.

(i) *Service of Notices.* Service of notices shall be made either:

(1) By delivering a copy to the administrator or representative thereof;

(2) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(3) By mailing a copy to the last known address of the administrator or representative thereof.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(2) pursuant to a final order, within the meaning of § 2570.61(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.60 through 2570.71 of this chapter for procedural rules relating to administrative hearings under section 502(c)(2) of the Act.

Signed at Washington, DC, this 11th day of October, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 88-23726 Filed 10-14-88; 8:45 am]

BILLING CODE 4510-29-M

29 CFR Part 2570

Employee Retirement Income; Procedures for Administrative Hearings

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that sets forth certain procedures relating to administrative hearings, in connection with the assessment of civil penalties under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). Section 502(c)(2) of the Act authorizes the Secretary of Labor to assess a civil penalty of up to \$1000 a day against a plan administrator who fails or refuses to file the annual report of an employee benefit plan required to be filed under section 101(b)(4) of the Act. A separate document is also being published today containing a proposed regulation which describes the manner in which the Department will assess civil penalties under ERISA section 502(c)(2) and certain procedures for agency review.

DATES: Written comments concerning the proposed regulation must be received by November 16, 1988.

If adopted, the regulation would be effective for purposes of establishing procedures relating to administrative hearings under section 502(c)(2) of the Act at any time on or after [30 days from the date of its publication as a final regulation].

ADDRESS: Written comments on the proposed regulation (preferably three copies) should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: "Proposed Section 502(c)(2) Procedural Regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671, U.S. Department of Labor, Washington, DC 20210, or Linda N. Winter, Plan Benefits Security Division, Office of the Solicitor, (202) 523-9596, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Section 9342(c) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987, Pub. L. 100-203) amended section 502(c) of ERISA by adding new paragraph 502(c)(2), which provides, among other things, that the Secretary of Labor may assess a civil penalty of up to \$1000 a day from the date of a plan administrator's failure or refusal to file the annual report of an employee benefit plan required to be filed with the Secretary under section 101(b)(4) of ERISA.¹ A separate notice of proposed rulemaking dealing with the manner in which the Department will assess penalties under section 502(c)(2) and procedures for agency review is also published in today's *Federal Register*.

The proposed regulation contained in this Notice would establish procedures for hearings before an Administrative Law Judge (ALJ) with respect to an assessment by the Department of Labor (Department) of a civil penalty under section 502(c)(2) and appealing an ALJ decision to the Secretary or his delegate. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for the purpose of carrying out most of the Secretary's responsibilities under ERISA. See Secretary's Order 1-87, 52 FR 13139 (April 21, 1987). A separate notice of proposed rulemaking providing additional guidance with respect to the assessment of civil penalties under section 502(c)(2) is also being published today.

The Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR Part 18, 48 FR 32538 (1983). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR Part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR Part 18 to the assessment of civil penalties under ERISA section 502(c)(2) and has decided to adopt many, though not all, of the provisions of 29 CFR Part 18 for these proceedings. Accordingly, adjudications relating to civil penalties

under ERISA section 502(c)(2) will be governed by the following sections of 29 CFR Part 18:

- § 18.4 Time Computations.
- § 18.5 (c) through (e) Responsive Pleading; answer and request for hearing.
- § 18.6 Motions and requests.
- § 18.7 Prehearing statements.
- § 18.8 Prehearing conferences.
- § 18.11 Consolidation of hearings.
- § 18.12 Amicus Curiae.
- § 18.13 Discovery methods.
- § 18.15 Protective orders.
- § 18.16 Supplementation of responses.
- § 18.17 Stipulations regarding discovery.
- § 18.18 Written interrogatories to parties.
- § 18.19 Production of documents and other evidence.
- § 18.20 Admissions.
- § 18.21 Motion to compel discovery.
- § 18.22 Depositions.
- § 18.23 Use of depositions at hearings.
- § 18.24 Subpoenas.
- § 18.25 Designation of administrative law judge.
- § 18.27 Notice of hearing.
- § 18.28 Continuances.
- § 18.29 Authority of administrative law judge.
- § 18.30 Unavailability of administrative law judge.
- § 18.31 Disqualification.
- § 18.32 Separation of functions.
- § 18.33 Expedition.
- § 18.34 Representation.
- § 18.35 Legal assistance.
- § 18.36 Standards of conduct.
- § 18.37 Hearing room conduct.
- § 18.38 Ex parte communications.
- § 18.39 Waiver of right to appear and failure to participate or to appear.
- § 18.40 Motion for summary decision.
- § 18.43 Formal hearings.
- § 18.44 Evidence.
- § 18.45 Official notice.
- § 18.46 In camera and protective orders.
- § 18.47 Exhibits.
- § 18.48 Records in other proceedings.
- § 18.49 Designation of parts of documents.
- § 18.50 Authenticity.
- § 18.51 Stipulations.
- § 18.52 Record of hearings.
- § 18.53 Closing of hearings.
- § 18.54 Closing of record.
- § 18.55 Receipt of documents after hearing.
- § 18.56 Restricted access.
- § 18.59 Certification of official record.

The regulations proposed herein relate specifically to procedures for assessing civil penalties under section 502(c)(2) of ERISA and are controlling to the extent they are inconsistent with any portion of 29 CFR Part 18. The proposed regulations are designed to maintain the maximum degree of uniformity with the rules set forth at 29 CFR Part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(2). For purposes of clarity, where a particular section of the existing procedural rules would be affected by

the proposed rules the entire section (with the appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involve changes from, or additions to, the rules in 29 CFR Part 18. The specific modifications to the rules in 29 CFR Part 18, and their relationship to the conduct of these proceedings generally, are outlined below in the preamble.

General

The applicability of these procedural rules under section 502(c)(2) is set forth in § 2570.60. In this regard, it should be noted that the procedural rules contained herein apply only to adjudicatory proceedings before ALJs of the U.S. Department of Labor. Proposed regulation § 2560.502c-2, also being published today, sets forth the procedures relating to issuance by PWBA of notices of intent to assess a penalty under ERISA section 502(c)(2), as well as procedures for agency review of statements of reasonable cause filed by persons against whom a penalty is assessed. Under the proposed procedural rules contained in this notice, an adjudicatory proceeding before an ALJ is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(2) files an answer to a notice of the agency's determination on a statement of reasonable cause. See: § 2570.61 (c) and (d) below, and proposed regulation § 2560.502c-2(h).

The definitional section (§ 2570.61) incorporates the basic adjudicatory principles set forth at 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(2). In this respect it differs from its more general counterpart at § 18.2 of this title. In particular, § 2570.61 states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority which the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. As noted above, the Secretary of Labor has delegated most of his or her authority to make final decisions to assess the penalty provided under section 502(c)(2) to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits.

¹ Section 9342(d)(2) of OBRA 1987 provides that the Secretary shall issue regulations necessary to carry out the 502(c)(2) civil penalty provision not later than January 1, 1989.

Proceedings Before Administrative Law Judges

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(2) (the respondent). However, a respondent must comply with the procedures relating to agency review set forth in proposed regulation § 2560.502c-2 before initiating adjudicatory proceedings. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in proposed regulation § 2560.502c-2(c), and the notice of determination on a statement of reasonable cause, as described in proposed regulation § 2560.502c-2(g), will be issued by PWBA, the agency responsible for administration and enforcement of section 502(c)(2), in accordance with the service of notice provisions described in proposed § 2560.502c-2(i). Proposed regulation § 2570.61 (c) and (d), together with proposed regulation § 2560.502c-2(h), contemplate that adjudicatory proceedings will be initiated with the filing by a respondent of an answer to a notice of the agency's determination on a statement of reasonable cause.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by proposed regulation § 2570.62.

A section on the consequences of default (§ 2570.64) has been included in these rules to indicate that, if the respondent fails to file an answer to the Department's notice of determination, described in proposed § 2560.502c-2(g), within the 30-day period provided by proposed § 2560.502c-2(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c). Proposed regulation § 2570.64 makes clear that, in the event of such a failure, the assessment of the penalty become final.

A section on consent orders or settlements (§ 2560.65) states that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. That section also provides that the decision of the ALJ which incorporates such consent order shall become final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR Part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements, are adopted in these

procedures for adjudications under ERISA section 502(c)(2). The section on the designation of parties (§ 2570.63) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(2).

Section 2570.66 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR Part 18 are to be applied in these proceedings under section 502(c)(2). For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR Part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR Part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(2).

The section on summary decisions (§ 2570.67) provides the requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(2). The section concerning the decision of the ALJ (§ 2570.68) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in a section 502(c)(2) case shall become the final decision of the Secretary unless a timely appeal is filed.

Appeals

The procedures for appeals of ALJ decisions under ERISA section 502(c)(2) are governed solely by the rules set forth in §§ 2570.69 through 2570.71, and without any reference to the appellate procedures contained in 29 CFR Part 18. Proposed regulation § 2570.69 establishes the time limit within which such appeals must be filed, the manner in which the issues for appeal are determined, and the procedures for making the entire record before the ALJ available to the Secretary. Proposed regulation § 2570.70 provides that review of the Secretary shall not be on a *de novo* basis, but rather on the basis of

the record before the ALJ, and without an opportunity for oral argument. Proposed regulation § 2570.71 sets forth the procedure for establishing a briefing schedule for such appeals, and states that the decision of the Secretary on such an appeal shall be final agency action within the meaning of 5 U.S.C. 704. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to an Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(2) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to proposed rules which would have a significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibility Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since the proposed procedural regulation is a rule of agency procedure or practice it is thus not subject to the requirements of the Regulatory Flexibility Act.

Executive Order 12291

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of \$100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by

certain proposed regulatory action. Section 3518(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of that Act do not apply to administrative actions involving specific individuals or entities. The Department has determined that the administrative adjudications which would be conducted pursuant to the procedures contained in this proposed regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The proposed regulation would be adopted pursuant to the authority contained in sections 502(c)(2) and 505 of ERISA (Pub. L. 93-406, 88 Stat. 892, 894; 29 U.S.C. 1132(c), 1135).

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Party in interest, Law enforcement, Pensions, Prohibited transactions.

Proposed Regulation

In view of the foregoing the Department proposes to amend Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2570—[AMENDED]

1. By revising the authority citation for Part 2570 to read as set forth below:

Authority: Section 502(c)(2), 502(i), and 505 of ERISA, 29 U.S.C. 1132(c)(2), 1132(i), 1135, and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

2. By adding in the appropriate place in Part 2570 the following new Subpart C:

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

Sec.	
2570.60	Scope of rules.
2570.61	Definitions.
2570.62	Service: Copies of documents and pleadings.
2570.63	Parties, how designated.
2570.64	Consequences of default.
2570.65	Consent order or settlement.
2570.66	Scope of discovery.
2570.67	Summary decision.
2570.68	Decision of the administrative law judge.
2570.69	Review by the Secretary.
2570.70	Scope of review.
2570.71	Procedures for review by the Secretary.

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

§ 2570.60 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(2) civil

penalty proceedings" (as defined in § 2570.61(n) of this subpart) under section 502(c)(2) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at Part 18 of this Title will apply to matters arising under ERISA section 502(c)(2) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.61 Definitions.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) "Adjudicatory proceedings" means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) "Administrative law judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. § 3105;

(c) "Answer" is defined for these proceedings as set forth in § 18.5(d)(1) of this title;

(d) "Commencement of proceeding" is the filing of an answer by the respondent;

(e) "Consent agreement" means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended;

(g) "Final order" means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(2) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c-2(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) "Order" means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(2);

(j) "Party" includes a person or agency named or admitted as a party to a proceeding;

(k) "Person" includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) "Petition" means a written request, made by a person or party, for some affirmative action;

(m) "Pleading" means the notice, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) "502(c)(2) civil penalty proceeding" means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(2) of ERISA;

(o) "Respondent" means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(2);

(p) "Secretary" means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official;

(q) "Solicitor" means the Solicitor of Labor or his or her delegate.

§ 2570.62 Service: Copies of documents and pleadings.

For 502(c)(2) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Suite 600, 1111 Twentieth Street NW., Washington, DC 20036, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 502(c)(2) Proceeding, P.O. Box 1914,

Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of notices, orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.63 Parties, how designated.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "Complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the

administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

- (1) Petitioner's interest in the proceeding;
- (2) How his or her participation as a party will contribute materially to the disposition of the proceeding;
- (3) Who will appear for petitioner;
- (4) The issues on which petitioner wishes to participate; and
- (5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as *amicus curiae*.

§ 2570.64 Consequences of default.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c-2(g) within the 30-day period provided by § 2560.502c-2(h) shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2). Such notice shall then become the final order of the Secretary.

§ 2570.65 Consent order or settlement.

For 502(c)(2) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set

for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.66 Scope of discovery.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative

(including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 2570.67 Summary decision.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) No genuine issue of material fact.

(1) Where no genuine issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.69 through 2570.71 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.68 Decision of the administrative law judge.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after

the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(2) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(2) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.69 through 2570.71.

§ 2570.69 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.70 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.71 Procedures for review by the Secretary.

(a) Upon receipt of a notice of appeal, the Secretary shall establish a briefing

schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 11th day of October 1988.

David M. Walker,

*Assistant Secretary, Pension and Welfare
Benefits Administration, U.S. Department of
Labor.*

[FR Doc. 88-23833 Filed 10-14-88; 8:45 am]

BILLING CODE 4510-29-M

[The text on this page is extremely faint and illegible. It appears to be a multi-column document, possibly a ledger or a report, with several columns of text. The content is too faded to transcribe accurately.]

Federal Register

Monday
October 17, 1988

Part IX

Department of Justice

Bureau of Prisons

28 CFR Part 541

Inmates Discipline and Special Housing
Units; Final Rule

28 CFR Part 550

Inmates Urine Surveillance to Detect and
Deter Illegal Drug Use; Final Rule

Modification to List of Bureau of Prisons
Institutions; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Discipline and Special Housing Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on inmate discipline and special housing units. The final amendments place into the rules a procedure for the disallowance of good conduct time credit for inmates committed under the new Sentencing Reform Act provisions of the Comprehensive Crime Control Act.

EFFECTIVE DATE: November 16, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 767, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/724-7070.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on inmate discipline and special housing units. A proposed rule on this subject was published in the *Federal Register* April 29, 1988 (at 53 FR 15540 et seq.). Interested persons were invited to submit comments on the proposed rule. No public comment was received. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no comment in the *Federal Register*.

The present amendment places into rule language Bureau of Prisons policy pertaining to the disallowance of good conduct time credits. Under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (CCCA), inmates sentenced for offenses committed on or after November 1, 1987 are not eligible for statutory good time, but are eligible to receive a yearly maximum of 54 days of good conduct time credit (18 U.S.C. 3624(b)). This credit is given at the end of each year of time served and, once given, is vested. The rule authorizes the Bureau's Discipline Hearing Officer (DHO) to disallow this credit, based on an inmate being found to have committed a prohibited act. The decision of the DHO is final, subject to procedural review by

the Warden and by inmate appeal through the Administrative Remedy procedures.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. In § 541.13—Table 3, Low Moderate Category, sanction B.1 is reworded to clarify that good conduct time credit may be disallowed only for repeated violations of the same prohibited act. A similar change is made in Table 4. In addition, the final rule clarifies the proposed rule by establishing time frames for the increased sanctions to be imposed.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR, Chapter V is amended by amending Subchapter C, Part 541, Subpart B as set forth below.

Dated: October 7, 1988.

J. Michael Quinlan,
Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

In Subchapter C, Part 541, Subpart B is amended to read as follows:

1. The authority citation for Part 541, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161-4166 (Repealed as to conduct occurring on or after November 1, 1987); 5006-5024 (Repealed October 12, 1984 as to conduct occurring after the date); 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 541.13, paragraph (a)(4) is revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(4) Low moderate category offenses: The Discipline Hearing Officer shall impose at least one sanction B.1, or E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). The Unit Discipline Committee shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed.

3. Section 541.13—Table 3, Prohibited Acts and Disciplinary Severity Scale, is amended by adding Sanction B.1 as a new sanction in the Greatest, High, Moderate, and Low Moderate Categories, and Table 4, Sanctions, is amended by adding (b.1) to read as follows (introductory text is republished for the convenience of the reader):

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition]

Code	Prohibited acts	Sanctions
GREATEST CATEGORY		
*	*	B.1 Disallow ordinarily between 50 and 75% (27-41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
*	*	*
HIGH CATEGORY		
*	*	B.1 Disallow ordinarily between 25 and 50% (14-27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
*	*	*
MODERATE CATEGORY		
*	*	B.1 Disallow ordinarily up to 25% (1-14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
*	*	*
LOW MODERATE CATEGORY		

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
B.1	Disallow ordinarily up to 12.5% (1-7 days) of good conduct time credit available for year (to be used only where inmate found to have committed a second violation of the same prohibited act within 6 months); Disallow ordinarily up to 25% (1-14 days) of good conduct time credit available for year (to be used only where inmate found to have committed a third violation of the same prohibited act within 6 months) (a good conduct time sanction may not be suspended).	
		Sanctions B.1, E-P.

TABLE 4.—SANCTIONS

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

(b) * * *

(b.1) *Disallowance of good conduct time.* An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (includes the inmate who committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive violation of the same prohibited act that occurs within a relatively short time frame (e.g., within 18 months for the same greatest severity prohibited act, within 12 months for the same high severity prohibited act, and within 6 months for the same moderate severity prohibited act). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the

suggested disallowance guidelines is to be documented and justified in the DHO report.

The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy procedures. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.

[FR Doc. 88-23863 Filed 10-14-88; 8:45 am]
BILLING CODE 4410-05-M

28 CFR Part 550

Control, Custody, Care, Treatment, and Instruction of Inmates Urine Surveillance To Detect and Deter Illegal Drug Use

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing final amendments to its rule on urine surveillance to detect and deter illegal drug use. The rule on urine surveillance is amended to increase the amount of water an inmate is allowed to drink during the allotted two-hour period and to state that no waiting period is required where the inmate directly and specifically refuses to provide a urine sample.

EFFECTIVE DATE: October 17, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 767, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/724-7070.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons is publishing final amendments to its rule on urine surveillance to detect and deter illegal drug use. The Bureau published amendments to its final rule on urine surveillance to detect and deter illegal drug use in the *Federal Register* January 3, 1985 (at 50 FR 411). Since the present amendment is intended to clarify existing language and poses no new restrictions on inmates, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to make this amendment effective immediately, without notice of proposed rulemaking, opportunity for public comment, or a delay in the effective date. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered, but will receive no response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

Section 550.30—In § 550.30(c), a sentence is added which states that "No waiting period or extra time need be allowed for an inmate who directly and specifically refuses to provide a urine sample." While this sentence is new, the intent is consistent with the Bureau's longstanding practice of immediately writing an incident report when an inmate directly and specifically refuses to obey the order of a staff member. Also in this section, the Bureau authorizes staff to offer eight ounces of water to assist the inmate in giving a urine sample. While this section has changed, the intent remains the same.

List of Subjects in 28 CFR Part 550

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: October 7, 1988.

J. Michael Quinlan,
Director, Bureau of Prisons.

In Subchapter C, Part 550, Subpart D is revised to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 550—DRUG PROGRAMS

Subpart D—Urine Surveillance To Detect and Deter Illegal Drug Use

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4251-4255, 5008-5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

§ 550.30 Purpose and scope.

(a) The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a

history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

(b) Institution staff shall determine whether a justifiable reason exists, (e.g., use of prescribed medication) for any positive urine test result. If the inmate's urine test shows a positive test result for

the presence of drugs which cannot be justified, staff shall file an incident report.

(c) Staff of the same sex as the inmate tested shall directly supervise the giving of the urine sample. If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff shall file an incident report. No waiting period or extra time need be allowed for an inmate who directly and specifically refuses to provide a urine sample. To eliminate the possibility of diluted or adulterated samples, staff shall keep the

inmate under direct visual supervision during this two-hour period, or until a complete sample is furnished. To assist the inmate in giving the sample, staff shall offer the inmate eight ounces of water at the beginning of the two-hour time period. An inmate is presumed to be unwilling if the inmate fails to provide a urine sample within the allotted time period. An inmate may rebut this presumption during the disciplinary process.

[FR Doc. 88-23864 Filed 10-14-88; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646-76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960-81, Reorganization Regulations, published in the *Federal Register* on October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions and is designating a new Federal Correctional Institution at Marianna, Florida, and a new Federal Prison Camp at Yankton, South Dakota. In addition, the Bureau is designating its satellite facility at the United States Penitentiary, Lompoc, California as the Federal Prison Camp, Lompoc, California. A new Metropolitan Detention Center at Los Angeles, California is being designated and is expected to open sometime in December, 1988. The Bureau is also designating new Federal Prison Camps at Ft. Bliss, El Paso, Texas; Homestead Air Force Base, Homestead, Florida; Nellis Air Force Base, Las Vegas, Nevada; Saufley Field, Pensacola, Florida; and Seymour-Johnson Air Force Base, Goldsboro, North Carolina. These institutions are expected to open later this year.

FOR FURTHER INFORMATION CONTACT:

Hank Jacob, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (202-724-7070).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility

Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (Repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

- (1) Atlanta, Georgia;
- (2) Leavenworth, Kansas;
- (3) Lewisburg, Pennsylvania;
- (4) Lompoc, California;
- (5) Marion, Illinois; and
- (6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

- (1) Alderson, West Virginia;
- (2) Ashland, Kentucky;
- (3) Bastrop, Texas;
- (4) Butner, North Carolina;
- (5) Danbury, Connecticut;
- (6) El Reno, Oklahoma;
- (7) Englewood, Colorado;
- (8) Fort Worth, Texas;
- (9) La Tuna, Texas;
- (10) Lexington, Kentucky;
- (11) Loretto, Pennsylvania;
- (12) Marianna, Florida;
- (13) Memphis, Tennessee;
- (14) Milan, Michigan;
- (15) Morgantown, West Virginia;
- (16) Otisville, New York;
- (17) Oxford, Wisconsin;
- (18) Petersburg, Virginia;
- (19) Phoenix, Arizona;
- (20) Pleasanton, California;
- (21) Ray Brook, New York;
- (22) Safford, Arizona;
- (23) Sandstone, Minnesota;
- (24) Seagoville, Texas;

- (25) Talladega, Alabama;
- (26) Tallahassee, Florida;
- (27) Terminal Island, California;
- (28) Texarkana, Texas; and
- (29) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

- (1) Allenwood, Pennsylvania;
- (2) Big Spring, Texas;
- (3) Boron, California;
- (4) Duluth, Minnesota;
- (5) Eglin Air Force Base, Florida;
- (6) Ft. Bliss, El Paso, Texas;
- (7) Homestead Air Force Base, Homestead, Florida;
- (8) Lompoc, California;
- (9) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
- (10) Nellis Air Force Base, Las Vegas, Nevada;
- (11) Saufley Field, Pensacola, Florida;
- (12) Seymour-Johnson Air Force Base, Goldsboro, North Carolina;
- (13) Tyndall Air Force Base, Florida; and
- (14) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

- (1) Chicago, Illinois;
- (2) Miami, Florida;
- (3) New York, New York; and
- (4) San Diego, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institution at Oakdale, Louisiana is designated as the Federal Detention Center.

H. The Bureau of Prisons institution at Los Angeles, California is designated as the Metropolitan Detention Center.

October 7, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

[FR Doc. 88-23865 Filed 10-14-88; 3:45 am]

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Environmental Protection Agency

Monday
October 17, 1988

Part X

Environmental Protection Agency

40 CFR Part 311

Worker Protection Standards for
Hazardous Waste Operations and
Emergency Response; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 311

[FRL-3259-6]

Worker Protection Standards for Hazardous Waste Operations and Emergency Response

AGENCY: Environmental Protection Agency [EPA].

ACTION: Proposed rule.

SUMMARY: The purpose of this rulemaking is to propose the application of worker protection standards for employees engaged in hazardous waste operations pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) (SARA). These standards will apply to employees of State and local governments in States without approved State plans under section 18(c) of the Occupational Safety and Health Act of 1970 (OSH Act). The Occupational Safety and Health Administration (OSHA) has proposed standards applicable to Federal employees, private employees, and State and local employees in States with OSHA-approved State plans. For the purpose of this EPA proposal, the public is requested to review the proposed OSHA regulation of August 10, 1987 (52 FR 29620). Not later than 90 days after the promulgation of OSHA's final regulation, EPA will promulgate identical standards for State and local employees in States without OSHA-approved State plans.

DATE: Comments must be received on or before November 16, 1988.

ADDRESSES:

Comments: Comments should be submitted in triplicate to Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 126WPS, Superfund Docket Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room LG-100 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, make an appointment by calling 202-382-3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost \$.20 per page.

FOR FURTHER INFORMATION CONTACT:

Rodney Turpin, Project Manager, Environmental Response Branch, Emergency Response Division [MS-101], U.S. Environmental Protection Agency, Woodbridge Avenue, Building 10, Edison, NJ. 08837, or the RCRA/Superfund Hotline at 1-800/424-9346, in Washington, DC at 1-202/382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Introduction
 - A. Statutory Authority
- II. Key Issues in this Rulemaking
 - A. Scope of Employees Covered by EPA's Worker Protection Standards
 - B. Effective Date
- III. Summary of Supporting Analyses
 - A. Executive Order No. 12291
 - B. Regulatory Flexibility Analysis
 - C. Paperwork Reduction Act

I. Introduction

A. Statutory Authority

Section 126(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the Secretary of Labor to promulgate within one year after the date of enactment of SARA, health and safety standards pursuant to section 6 of the Occupational Safety and Health Act of 1970 (OSH Act), for employees engaged in hazardous waste operations. These section 126(a) standards were proposed by the Department of Labor's Occupational Safety and Health Administration (OSHA) on August 10, 1987 (52 FR 29620). Under SARA section 126(c), the OSHA section 126(a) worker protection regulations are effective one year after the date of their promulgation. Section 126(e) of SARA requires the Secretary of Labor to issue interim final OSHA regulations within 60 days of SARA's enactment. The interim final regulations take effect immediately upon issuance and remain effective until final regulations become effective. The interim final regulations contain standards for Federal employees, private employees, and State and local employees in States which OSHA-approved State plans, who are engaged in hazardous waste operations (including emergency responses to hazardous substance incidents). These interim final regulations were issued by OSHA and published in the **Federal Register** on December 19, 1986 (51 FR 45654).

Section 126(f) of SARA requires the EPA Administrator to promulgate standards identical to those contained in the section 126(a) OSHA regulations (which will be codified at 29 CFR 1910.120) not later than 90 days after the promulgation of the OSHA regulations.

The EPA regulations are to cover State and local government employees in States, territories, and districts without an approved worker protection plan under section 18 of the OSH Act. EPA is required by SARA section 126(f) to promulgate standards identical to those promulgated by OSHA under SARA section 126(a). Today's proposed rule relates to the application of the OSHA standards rather than to their substantive requirements.

II. Key Issues in this Rulemaking

The following two issues regarding EPA's responsibilities under SARA section 126(f) are raised by the language of the statute: (1) The appropriate definition of the term "employees of State and local governments;" and (2) the appropriate effective date of EPA's worker protection regulations. Both of these issues are discussed briefly below.

A. Scope of Employees Covered by EPA's Worker Protection Standards

SARA section 126(f) covers "employees of State and local governments" who are engaged in hazardous waste operations. The statute does not define the term "employee." The definition of employee is important because whether that term is defined narrowly or broadly determines whether volunteers, such as volunteer fire fighters responding to emergency incidents, are protected by the EPA standards. Approximately 80 percent of all fire departments are volunteer.

Section 6 of the OSH Act requires the Secretary of Labor to promulgate national occupational safety and health standards for the protection of employees. For purposes of the OSH Act, the term "employee" is defined as an employee of an "employer." The definition of the latter term explicitly excludes "any State or political subdivision of a State." Thus, State and local employees are not covered by the section 6 standards. Section 18(b) of the OSH Act, however, provides that a State may submit a plan to the Secretary of Labor for occupational safety and health standards applicable only to employees of the State and its political subdivisions (i.e., public employees). Section 18(c) of the OSH Act sets forth the criteria that such a State plan must meet. Neither the OSHA interim final worker protection standards nor the OSHA proposed standards explicitly define the term "employee." OSHA allows the individual States with OSHA-approved worker protection plans to interpret the term "employee"; some States include volunteers and some do not. EPA is proposing to allow individual States to

develop their own definition of the term "employee," so long as the definition is consistent with other State statutes or regulations. This approach is consistent with the approach taken by OSHA and allows the States to maintain consistency with other State standards. One disadvantage of this option, however, is that varying State definitions of the term "employee" will make EPA's worker protection standards more difficult for the Agency to implement because the scope of the standards will differ from State to State.

The Agency considered proposing a broad definition of the term "employee" to include all State workers, whether compensated or not. Many State worker's compensation statutes provide support for such a broad definition of "employee." These statutes provide cash benefits and medical care to victims of work-related injuries. Coverage is limited to "employees" as opposed to "independent contractors" who are not controlled directly by the employer. Most States make worker's compensation available to public employees and a number of States also have provisions expressly including volunteer fire fighters. In fact, volunteer fire fighters, either by legislation or by judicial decision, have been brought within worker's compensation protection by many States. States that include volunteer fire fighters within the worker's compensation umbrella include Alaska, Arizona, California, Colorado, Delaware, Hawaii, Iowa, Maryland, Michigan, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, and Wisconsin. Although many States have not extended worker's compensation protection to volunteers such as volunteer fire fighters, the trend is toward such coverage.

The Agency believes that a broad definition of "employee" may be appropriate because whether or not wages are paid may be an insufficient basis for allowing lower standards of protection for individuals who can be exposed to hazardous situations in the course of performing emergency response duties. As stated in the preamble to the OSHA interim final rule, the clear Congressional intent of requiring worker safety standards is to allow employees to participate in hazardous waste cleanup activities with minimal risk to their health and safety (51 FR 45657). A reasonable interpretation is that training, medical surveillance, maximum exposure limits, and other worker protection standards specified in SARA section 126(b) should apply to all persons whose duties bring

them into contact with hazardous waste during site cleanup and emergency response, whether or not they receive monetary compensation for the activity. EPA requests comments on this broader definition of the term "employee." Specifically, the Agency requests comments on defining "employee" to include both compensated and uncompensated State and local workers engaged in hazardous waste operations.

As mentioned above, EPA's worker protection standards must be identical to OSHA's standards. OSHA's proposed standards require training for all employees who "engage in hazardous waste operations that could expose them to hazardous substances, safety or health hazards." Employees may not engage in emergency response activities or cleanup at hazardous waste sites unless they receive proper training. (See 29 CFR 1910.120(e), 52 FR 29642-43, August 10, 1987). Therefore, employees in non-OSHA States will be allowed to participate in emergency response activities only if such employees receive proper training. Because some employers may not be able to provide the necessary level of training to their employees (and therefore the employees would be foreclosed from participating in response activities), the Agency is concerned about the potential impact on emergency response capabilities. The Agency solicits comments on whether requiring training for such employees may decrease emergency response capabilities, thus potentially endangering public health or welfare or the environment.

B. Effective Date

As mentioned earlier, SARA section 126(a) directs the Secretary of Labor to promulgate worker protection standards within one year of the enactment of SARA. Section 126(c) of SARA provides that the final regulations establishing these standards shall become effective one year after the date they are promulgated by the Secretary of Labor. SARA section 126(f) directs the Administrator of EPA to promulgate identical standards not later than 90 days after the promulgation of the section 126(c) regulations.

EPA has considered two alternative effective dates for the EPA rule applying OSHA's standards to State and local employees in States and territories that do not have OSHA-approved plans: (1) The date of promulgation of the EPA regulations; and (2) 90 days after the date of promulgation of the EPA regulations.

EPA has decided to proceed with the second alternative. State and local government employers in non-OSHA

States and territories need some time between the date of promulgation and the date of compliance to enable them to train personnel and purchase equipment. Although OSHA's interim final rule (51 FR 45654, December 19, 1986) provided some notice of the applicable requirements, that rule did not specify the universe of employers subject to the EPA regulations. In developing this proposed rule, EPA spoke with some State environmental agencies and some local fire departments to determine the amount of time that would be necessary to comply with the SARA worker protection standards. Two State environmental agencies commented that 90 days is a sufficient time period in which to reach full compliance with the worker protection standards. It is significant, however, that one of these agencies is in an OSHA-approved State, and although the other is not in an OSHA-approved State, it has a relatively advanced worker protection program. Some local fire departments stated that they already have begun to comply with the standards, but that obtaining funds for training and purchase of equipment is a major concern. The results of the above surveys indicate that various States and localities are at different stages of compliance. Based on its initial analysis of these results, EPA believes that an effective date of 90 days after promulgation would allow sufficient time for State and local employers and employees in non-OSHA States and territories to prepare properly for compliance with these regulations. The 90-day effective date also would minimize the amount of time during which private contractors would be covered by the OSHA standards while State and local employees in non-OSHA States and territories would not be covered by any worker protection standards. The Agency solicits comments from State and local employers and employees on whether States with less advanced worker protection programs may need more time to comply. EPA also encourages all such State and local employers who are able to comply sooner than 90 days after the date of promulgation to do so.

III. Summary of Supporting Analyses

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

- (1) An annual effect on the economy of \$100 million or more; or
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that today's proposed rule is non-major. The Agency estimates that the annual cost of compliance with EPA's proposed application of OSHA's worker protection standards to State and local employees in non-OSHA States and territories is approximately \$38.4 million. This estimate is based on an analysis conducted by OSHA of the economic effects in all 50 States of the SARA section 126 worker protection standards.¹ EPA's analysis attributes some of the costs contained in the OSHA economic report to EPA's worker protection regulations. The EPA costs are a subset of the OSHA cost estimates.

In general, most of the costs attributable to the EPA regulations are incurred by employers of two categories of workers in non-OSHA States and territories: (1) Public emergency response teams; and (2) public employees, including On-Scene Coordinators, engaged in government-mandated cleanups of uncontrolled hazardous waste sites. The estimated net annual costs attributable to these two categories of employees are \$37 million and \$1.4 million, respectively.

¹ See U.S. Department of Labor, Occupational Safety and Health Administration, "Preliminary Regulatory Impact and Regulatory Flexibility Analysis of the Occupational Standard for Hazardous Waste Operations and Emergency Response," July 31, 1987.

Thus, the total estimated annual cost is \$38.4 million. For further detail, see "Compliance Cost Analysis in Support of EPA Worker Protection Standards Under Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986." This proposed rule has been submitted to the Office of Management and Budget for review as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." In OSHA's Regulatory Flexibility Analysis for its proposed worker protection standards, OSHA determined that the standards may have some impact on local subcontractors performing hazardous waste operations. The EPA regulations do not affect these workers because they are private employees. There is a possibility, however, that some small municipalities in non-OSHA States may be unable to afford the costs of compliance with the worker protection standards. Such municipalities have the option of not acting as first responders to hazardous materials incidents, in which case they would not have to comply with the worker protection standards and would not incur any costs.

C. Paperwork Reduction Act

Because EPA has no discretion under SARA section 126 with respect to the substance of the worker protection standards, EPA in effect is applying the OSHA standards to State and local employees in non-OSHA States. This extension of the OSHA standards (particularly the informational program requirements of 29 CFR 1910.120(i)) will provide a small increase in the paperwork burden imposed on the regulated community for information

collection associated with protection of workers engaged in hazardous waste operations.

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to EPA and the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 311

Containers, Drums, Emergency response, Hazardous materials, Hazardous substances, Hazardous waste, Materials handling and storage, Personal protection equipment, Storage areas, Training, Waste disposal.

Date: September 28, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations, Chapter I by adding a new Part 311 to read as follows:

PART 311—WORKER PROTECTION

Authority: 29 U.S.C. 655, Pub. L. 99-499.

§ 311.1 Application.

The substantive provisions of 29 CFR 1910.120 apply to State and local employees engaged in "hazardous waste operations," as defined in 29 CFR 1910.120(a)(3), in States, territories or districts that do not have a worker safety and health plan approved under section 18 of the Occupational Safety and Health Act of 1970.

[FR Doc. 88-23608 Filed 10-14-88; 8:45 am]

BILLING CODE 6580-50-M

Registered Federal Report

Monday
October 17, 1988

Part XI

The President

Office of Management and Budget

Balanced Budget and Emergency Deficit
Control Reaffirmation Act (Gramm-
Rudman-Hollings Amendments); Final
Order and Revised Sequestration Report
for Fiscal Year 1989

Presidential Documents

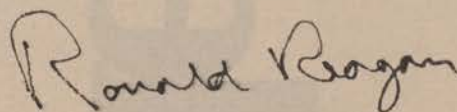
Title 3—

The President

FINAL
ORDEREmergency Deficit Control Measures
for Fiscal Year 1989

By the authority vested in me as President under the Constitution and by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) (hereafter referred to as "the Act"), and in accordance with the report of the Director of the Office of Management and Budget issued October 15, 1988, pursuant to section 251(c)(2) of the Act, I hereby state, pursuant to section 252(b), that no aggregate outlay reductions are required.

This Order shall be reported to the Congress and shall be published in the Federal Register.



THE WHITE HOUSE,

October 15, 1988.

October 15, 1988

OFFICE OF MANAGEMENT AND BUDGET

Revised Sequestration Report for Fiscal Year 1989

Agency: Office of Management and Budget

Action: Report Transmittal

SUMMARY: This notice transmits the final Sequester Report for Fiscal Year 1989. In accordance with the provisions of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 15, 1988

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

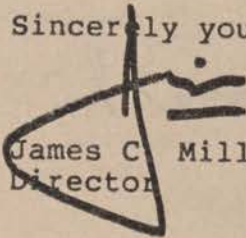
In accordance with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), I hereby submit my Final OMB Sequester Report to the President and Congress for FY 1989.

The budget estimates contained in this report are based on laws enacted, and regulations promulgated as final, by October 15, 1988. Since Congress has demonstrated fiscal restraint in passing appropriations bills, as well as other bills affecting the deficit, I am pleased to report that my estimate of the Gramm-Rudman-Hollings deficit baseline for FY 1989 is below the \$146 billion sequester trigger level specified by the Act. Therefore, no sequester is required, and a Final Presidential Order stating such should be issued forthwith.

The report includes the economic assumptions, the projected budget baseline levels, and comparisons with the estimates provided by the Director of the Congressional Budget Office in his report of October 11th.

With best wishes, I remain and shall remain,

Sincerely yours,


James C. Miller III
Director

IDENTICAL LETTERS SENT TO HONORABLE GEORGE BUSH,
HONORABLE JAMES C. WRIGHT, JR.

TABLE OF CONTENTS

	<u>Page</u>
LETTER OF TRANSMITTAL	
INTRODUCTION.....	1
G-R-H BASELINE TOTALS FOR 1989.....	3
NET DEFICIT REDUCTION ACHIEVED SINCE JANUARY.....	5
ECONOMIC ASSUMPTIONS.....	7
COMPOSITION OF G-R-H BASELINE OUTLAYS.....	9
COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES.....	11

LIST OF TABLES

1. G-R-H Baseline Totals for 1989.....	4
2. Differences Between January Law and October Law G-R-H Baseline Deficits.....	6
3. Economic Assumptions.....	7
4. Real Economic Growth Rates by Quarter.....	8
5. Composition of G-R-H Baseline Outlay Estimates for 1989.....	10
6. Differences Between OMB and CBO G-R-H Baseline Deficits.....	13
7. G-R-H Baseline Spending Estimates for 1989 by Function.....	14
8. G-R-H Baseline Spending Estimates for 1989 by Agency.....	15

GENERAL NOTES

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1. All years referred to are fiscal years unless otherwise noted.
 2. Details in the tables and text may not add to totals because of rounding.
 3. Unless otherwise noted, the source of all data in this report is the Office of Management and Budget.
 4. Unless otherwise noted, "the Act" refers to The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) as amended by The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).
-

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, commonly known as Gramm-Rudman-Hollings (G-R-H), sets deficit targets for 1989 through 1993 and, if necessary, requires a sequester of budgetary resources (i.e., across-the-board reductions of selected accounts) to achieve these targets. The table below shows the deficit targets specified in the Act. Except in 1993, the Act allows for a \$10.0 billion margin-of-error. Thus, there will be no sequester for 1989 because the final G-R-H baseline deficit estimate does not exceed the sequester trigger level of \$146.0 billion. However, if that 1989 baseline deficit had exceeded \$146.0 billion, the Act would have required a sequester sufficient to reduce the deficit baseline to the target level of \$136.0 billion. a/

Deficit Targets
(in billions of dollars)

<u>Fiscal Year</u>	<u>Target Deficit</u>	<u>Sequester Trigger</u>
1989 <u>a/</u>	136.0	146.0
1990.....	100.0	110.0
1991.....	64.0	74.0
1992.....	28.0	38.0
1993.....	zero	zero

a/ For 1989 only, the outlay reductions resulting from sequestration are limited to \$36.0 billion. In addition, there would be no sequester if the laws enacted and regulations promulgated between January 1, 1988, and October 1988 reduced the deficit by \$36.0 billion.

It is important to note that the G-R-H baseline estimates in this report are not intended to be projections of actual receipts, outlays, and the resulting deficit under standard Office of Management and Budget (OMB) methodologies. Instead, the baseline estimates are constructed by following very precise legislative language requiring OMB to use specific assumptions in estimating budgetary resources, outlays, and receipts.

Under the Act, the Director of OMB determines each year whether or not sequestration is necessary and, if so, the magnitude of the sequester. The Congressional Budget Office (CBO) plays an advisory role in this process. Each year, the two agencies are required to prepare independently two sets of sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and they provide a basis for comparison against which Congress and others may assess the OMB reports. The OMB reports are made to the President and to Congress, and they provide the basis for sequestration orders to be issued by the President. The timetable for the OMB and CBO

reports and Presidential orders for 1989 is as follows:

Report or Order	Date
Snapshot date for initial OMB and CBO reports.....	August 15th
Initial CBO report.....	August 20th
Initial OMB report.....	August 25th
Initial Presidential order.....	August 25th
Revised CBO report.....	October 11th ^{1/}
Revised OMB report.....	October 15th
Final Presidential order.....	October 15th

^{1/} The statutory date for the revised CBO report is October 10th, which is a legal holiday in 1988. The report was, therefore, submitted on the following day, as prescribed by the Act.

The initial OMB and CBO sequestration reports were based on laws enacted and final regulations promulgated as of a common "snapshot date" of August 15th. In contrast, the revised reports must be based on laws enacted and final regulations promulgated by the latest possible date before the reports are issued. Since the CBO report was issued four days before this OMB report, the second "snapshot date" is different in the final reports of the two agencies. Thus, because they were enacted or promulgated after CBO's snapshot date, the Family Support Act of 1988 and the Agriculture Department's recently promulgated final regulations for farm price support programs are reflected in this report but are not reflected in the CBO report.

As required by the Act, OMB issued estimates of the G-R-H baseline deficit in its initial report on August 25th. CBO issued its revised report to the Director of OMB and Congress on October 11th. The next step in the G-R-H process is the issuance of this report, which the Director of OMB provides to the President and Congress.

As required by the Act, this report:

- Estimates the 1989 baseline deficit, using the economic and technical assumptions OMB used in the Mid-Session Review and August 25th report;
- Estimates the effect of legislation enacted or final regulations promulgated since January 1, 1988, on the baseline deficit;

- Calculates whether a sequester is required; and
- Presents and explains significant differences between the estimates in this report and the estimates CBO presented in its revised report.

Since this report indicates that no reductions are required under the Act for 1989, the President's final order, also to be issued today (October 15, 1988), will state that no sequester is required for 1989.

G-R-H BASELINE TOTALS FOR 1989

As shown in Table 1, OMB's current baseline deficit estimate for 1989 is \$145.5 billion -- \$0.5 billion below the \$146 billion level that would trigger a sequester. G-R-H baseline revenues are estimated at \$973.5 billion, and G-R-H baseline outlays are estimated to total \$1,119.0 billion. These estimates are made in accordance with the specifications set forth in the Act. The budget baseline estimates shown in this report reflect legislation enacted and regulations promulgated as final by October 15, 1988. They assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, except that expiring provisions of law providing revenues and spending authority are assumed to terminate as scheduled. ^{1/}

The revised baseline estimates for discretionary spending accounts are based on enacted appropriations for 1989. As required by the Act, the baseline estimates include the receipts and outlays of the off-budget social security trust funds, but social security benefits themselves are exempt from sequestration.

As discussed in our initial report, OMB's estimate of the baseline deficit is further affected by two specific requirements of the Act. First, the Act specifically requires that in developing the G-R-H baseline the Director of OMB shall assume that the aggregate spendout rate (the ratio of new outlays to new budgetary resources) from sequesterable discretionary resources for defense programs not differ by more than one-half percentage point from the comparable rates contained in the sequester report submitted for the previous fiscal year. The Act applies the same requirement to nondefense programs.

The estimates for defense programs meet this requirement. To meet this Congressionally-imposed constraint for nondefense programs, an adjustment from our normal spendout rate methodology had to be made. Thus, an increase in outlays from new budgetary resources in the amount of \$0.6 billion was added to our normal calculations in the Initial Report in order to bring the aggregate spendout rate to within one-half percentage point of the benchmark

^{1/} The Act requires exceptions to the expiring-provision assumption for excise taxes dedicated to a trust fund (but not for spending authority in that trust fund), for Commodity Credit Corporation price support programs, for contract authority for transportation trust funds, and for authority to provide insurance through the Federal Housing Administration fund.

rate. As a result of legislation enacted subsequent to the August 15th snapshot date for the Initial Report, the adjustment required to meet the aggregate spendout rate provision for nondefense programs has been increased to \$1.1 billion.

Table 1.--G-R-H Baseline Totals for 1989
(in billions of dollars)

	Laws and regulations in effect as of		
	January 1, 1988	August 15, 1988	October 15, 1988
Receipts.....	973.4	973.8	973.5
Outlays.....	<u>1,113.7</u>	<u>1,117.8</u>	<u>1,119.0</u>
Deficit.....	140.3	144.0	145.5

NOTE: All estimates shown reflect the economic and technical assumptions used in the Mid-Session Review of the 1989 Budget. Based on the economic and technical assumptions in the President's February Budget, the estimates under laws and regulations in effect as of January 1, 1988 were as follows: Receipts of \$964.6 billion; outlays of \$1,107.4 billion; and a deficit of \$142.7 billion.

Second, the Act requires that certain outlays for medicare in the current baseline not differ for technical or economic reasons by more than one percent from the comparable level published in the current services baseline in February. The most up-to-date information available for these programs at the time of the Mid-Session Review resulted in estimates that slightly exceeded this one percent rule. To meet the requirements of the Act, a separate adjustment for the G-R-H medicare requirement was added to the baseline. This adjustment reduced outlays in the medicare function and the baseline outlay and deficit totals by \$0.3 billion. This adjustment was also in the Initial Report and is in this report.

NET DEFICIT REDUCTION ACHIEVED SINCE JANUARY

Estimates of the G-R-H baseline based on laws enacted, and regulations promulgated as final, by January 1, 1988, produce a G-R-H baseline deficit of \$140.3 billion. ^{2/} Table 2 shows the impact on this deficit estimate of legislation enacted and regulations promulgated as final since January. In total, these policy changes have increased the baseline deficit by \$5.2 billion. The Disaster Assistance Act of 1988, which increased the baseline deficit by \$3.9 billion, was primarily responsible for the increase in the baseline deficit between January 1, 1988, and August 15, 1988, the snapshot date used for the G-R-H baseline estimates in the Initial Sequester Report. Since August 15, 1988, further changes increased the baseline deficit by \$1.4 billion. The twelve annual appropriations bills enacted between August 15th and October 1st increased the baseline deficit by \$0.3 billion. Spending for domestic programs was increased by \$1.1 billion while spending for national defense and international affairs programs was reduced by \$0.6 and \$0.3 billion, respectively. The Omnibus Trade and Competitiveness Act of 1988, which provides an expanded trade adjustment assistance entitlement and reduces tariff revenues, increased the baseline deficit by \$0.3 billion. The Hunger Prevention Act of 1988, which provides increases for food stamps, child nutrition, and emergency feeding, also increased the baseline deficit by \$0.3 billion. Four final regulations affecting medicare issued by the Department of Health and Human Services increased the baseline deficit by \$0.1 billion, but were nearly offset by two final regulations affecting farm price supports issued by the Department of Agriculture.

Legislation enacted since August 15th has resulted in a lower aggregate spendout rate from sequesterable nondefense discretionary resources than was implicit in the Initial Sequester Report. This is due primarily to enactment of an obligation limitation on the conservation reserve program, which reduces spending from new budget authority, and the enactment of a restraint on the space station program, which delays the obligation of funds until midway through 1989. The net effect of such spendout rate changes is an increase of \$0.4 billion in the adjustment needed to meet the aggregate spendout rate requirement of the G-R-H Act. ^{3/}

^{2/} January law estimates are based on the same economic and technical assumptions used for the Mid-Session Review.

^{3/} The spendout rate requirement is discussed in the previous section.

Table 2.--Differences Between January Law and October Law
G-R-H Baseline Deficits for 1989
(in billions of dollars)

January 1st Law Baseline Deficit 1/.....	140.3
Legislation enacted between January 1st and August 15, 1988:	
Disaster Assistance Act of 1988 (P.L. 100-387).....	3.9
Other.....	0.2
Subtotal, legislation enacted January 1st - August 15th.....	4.2
Other 2/.....	-0.4
Subtotal, change from January 1st law to August 15th law.....	3.7
August 15th Law Baseline Deficit.....	144.0
Legislation enacted since August 15, 1988:	
Appropriations action:	
National defense.....	-0.6
International affairs.....	-0.3
Domestic.....	1.1
Impact of enacted Federal employee pay raise.....	0.1
Subtotal, appropriations action.....	0.3
Direct spending legislation:	
Omnibus Trade and Competitiveness Act of 1988.....	0.3
Hunger Prevention Act of 1988.....	0.3
Other.....	*
Subtotal, direct spending legislation.....	0.7
Subtotal, legislation enacted since August 15th.....	1.0
Final regulations:	
Medicare.....	0.1
Farm price supports.....	-0.1
Subtotal, final regulations.....	*
Impact of Congressional action on the adjustment for aggregate spendout rate.....	0.4
Debt service (interest).....	0.1
Subtotal, change from August 15th law to current law.....	1.4
Current Law Baseline Deficit.....	145.5

* \$50 million or less.

1/ January law estimates are based on the same economic and technical assumptions used for the Mid-Session Review.

2/ Debt service and the impact of congressional action on the adjustment for aggregate spendout rate.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the G-R-H baseline estimates for 1989 are shown in Table 3. As required by the Act, these are the same assumptions used by OMB for its August 25th initial report. They were also used for the Mid-Session Review of the 1989 Budget.

The Act requires the OMB Director to estimate the rate of real GNP growth for each quarter of fiscal year 1989, and for the last two quarters of fiscal year 1988. These estimates are shown in Table 4. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than one percent for two consecutive quarters, Congress may suspend many of the provisions of the Act. Neither OMB nor CBO projects real economic growth to be less than zero in any quarter during 1988 or 1989.

Table 3.--Economic Assumptions
(Fiscal Year 1989)

Gross National Product:	
Current dollars (in billions of dollars).....	5,039
Percent change, year over year.....	7.0
Constant (1982) dollars (in billions of dollars).....	4,046
Percent change, year over year.....	3.1
GNP Implicit Price Deflator (percent change, year over year).....	3.8
CPI-W (percent change, year over year).....	4.2
Civilian Unemployment Rate (percent, fiscal year average).....	5.4
Interest Rates (fiscal year average):	
91-day Treasury bills.....	5.6
10-year Treasury notes.....	8.2

Table 4.--Real Economic Growth Rates by Quarter
(in percents, annual rates)

FY 1988						
Actual	Estimate		FY 1989 Estimates			
Jan-Mar 1988 a/	Apr-Jun 1988 b/	Jul-Sep 1988	Oct-Dec 1988	Jan-Mar 1989	Apr-Jun 1989	Jul-Sep 1989
3.6	2.6	2.9	2.9	3.3	3.3	3.3

- a/ As reported by the Department of Commerce (June 23, 1988) and published in the Mid-Session Review of the 1989 Budget. Subsequently, the Department of Commerce revised the "actual" for January - March 1988 to 3.4 percent. Pursuant to the Act, OMB may not update the Mid-Session figure for purposes of estimating the G-R-H baseline.
- b/ On September 20, 1988, the Department of Commerce reported a revised preliminary "actual" for April - June 1988 of 3.0 percent.

COMPOSITION OF G-R-H BASELINE OUTLAYS

Table 5 provides further detail on the G-R-H baseline outlay estimates for 1989. An estimated \$107.6 billion of 1989 outlays for defense programs, or 37 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction. This figure excludes outlays from military personnel accounts. Under the Act, the President is granted authority, which he notified Congress he intended to use if there were to be a sequester this year, to exempt all military personnel accounts from such sequester.

An estimated \$218.2 billion of outlays for nondefense programs, or 26 percent of total nondefense outlays, are associated with sequesterable budgetary resources. About \$110.2 billion of these outlays, or 13 percent of total nondefense outlays, are associated with programs with automatic spending increases and certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs.

Of the total estimated 1989 nondefense outlays of \$825.9 billion, an estimated \$108.0 billion -- about 13 percent of nondefense outlays -- are associated with budgetary resources subject to an across-the-board percentage reduction. ^{4/}

An estimated \$607.7 billion of nondefense outlays, or 74 percent of total nondefense outlays, are exempt from sequestration.

For defense and nondefense programs combined, an estimated \$793.2 billion in outlays, or 71 percent of total outlays, are associated with budgetary resources exempt from sequestration.

^{4/} The estimated \$108.0 billion nondefense total subject to across-the-board reduction shown in Table 5 excludes \$6.0 billion of 1990 outlays for CCC that would also have been subject to a 1989 sequester.

Table 5.--Composition of G-R-H Baseline Outlay Estimates for 1989
(dollar amounts in billions)

	Estimate	Percent of Total
Defense Programs <u>a</u> /:		
Subject to across-the-board reduction <u>b</u> /....	107.6	9.6
Exempt from sequestration <u>c</u> /.....	185.5	16.6
Subtotal, defense programs.....	293.1	26.2
Nondefense Programs:		
Subject to sequestration:		
Certain programs with automatic spending increases and special food stamps provision <u>d</u> /.....	1.3	0.1
Certain special rule programs <u>e</u> /.....	108.9	9.7
Subject to across-the-board reductions <u>f</u> /.....	108.0	9.7
Subtotal, subject to sequestration.....	218.2	19.5
Exempt from sequestration:		
Social security.....	230.6	20.6
Federal retirement, disability, and workers compensation.....	62.0	5.5
Earned income tax credit.....	3.8	0.3
Low-income programs <u>g</u> /.....	75.6	6.8
Veterans compensation and pensions.....	14.9	1.3
State unemployment benefits.....	13.3	1.2
Offsetting receipts and collections.....	-62.0	-5.5
Net interest.....	157.6	14.1
Other <u>h</u> /.....	111.9	10.0
Subtotal, exempt from sequestration.....	607.7	54.3
Subtotal, nondefense programs.....	825.9	73.8
Total.....	1,119.0	100.0

a/ Budget function 050, excluding FEMA programs.

b/ Excludes military personnel accounts exempted by Presidential authority.

c/ Largely outlays from military personnel accounts, which were exempted by Presidential authority, and outlays from obligated balances.

d/ National Wool Act, special milk, and vocational rehabilitation programs and a special one-time provision for the food stamps program. Includes \$48 million under G-R-H rules for a 4.5 percent automatic spending increase for vocational rehabilitation State grants.

e/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.

f/ Excludes \$6.0 billion in estimated 1990 outlays for the Commodity Credit Corporation (CCC) that would also have been subject to a 1989 sequester.

g/ Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC.

h/ Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs.

COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Director of CBO issued his final sequester report on October 11th showing an estimate of \$151.8 billion for the G-R-H baseline deficit for 1989. As shown in Table 6, CBO and OMB differ by \$6.4 billion in their estimates of this baseline deficit. While OMB estimates show that the deficit is below the \$146 billion trigger for sequestration, the CBO estimate is \$5.8 billion above the trigger, which would require outlay reductions of \$15.8 billion. This \$6.4 billion difference is small, amounting to less than three quarters of 1 percent of either the G-R-H total receipt or outlay estimate.

Because the Act required CBO to complete its revised report four days before OMB, CBO estimates do not include the Family Support Act of 1988, which was signed into law after its estimates were completed, while the law is reflected in OMB estimates. OMB estimates that this legislation decreases the G-R-H baseline deficit by \$0.1 billion. In addition, CBO estimates do not reflect two final regulations affecting farm price supports, which were issued by the Department of Agriculture after the CBO report was completed. OMB estimates that these regulations, on net, reduce the baseline deficit by \$0.1 billion.

The difference between OMB and CBO economic assumptions accounts for \$5.0 billion of the difference between the baseline deficit estimates. The CBO forecast includes higher interest, unemployment, and inflation rates than the OMB forecast. Technical estimating differences result in an additional \$2.0 billion difference in the baseline deficit estimates. These differences are the net effect of a \$2.3 billion increase in baseline receipts under CBO technical assumptions relative to OMB estimates, which is more than offset by a \$4.2 billion increase in baseline outlay estimates, principally for national defense and aid to thrift and banking institutions. For national defense, CBO estimates \$4.7 billion more in outlays than OMB primarily due to faster spendout rates from new budgetary resources. Differences for the Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation are in large part due to different assumptions about the timing of problem case resolution, with CBO assuming less aid will be given in 1988 and more in 1989. Accounting differences in the classification of Nuclear Regulatory Commission user fees and certain customs fees have no effect on the baseline deficit but reduce CBO estimates of both baseline receipts and baseline outlays below the OMB estimates by \$0.3 billion. Finally, two adjustments required by law of OMB baseline estimates, which are discussed in the section on G-R-H baseline totals, do not affect the CBO estimates. On net, the adjustments increase the OMB G-R-H baseline outlay and deficit estimates by \$0.8 billion.

Because OMB and CBO differ in their estimates of the baseline deficit, they also differ in their estimate of the need for a sequester and required outlay reductions. OMB estimates no sequester of budgetary resources or required outlay reductions. CBO, however, estimates required outlay reductions totalling \$15.8 billion (\$7.9 billion each for defense programs and for nondefense programs). CBO's estimate of required reductions in budgetary resources is \$47.5 billion (\$18.0 billion for defense programs and \$29.5 billion for nondefense programs). Similarly, since OMB estimates that no

outlay reductions are required, no budgetary resource reductions are estimated using CBO's technical assumptions with OMB's aggregate outlay reduction amount (a calculation required by Section 251(a)(2)(B)(ii) of the Act whether or not a sequester is required).

Summary tables showing the baseline budget authority and outlay estimates by agency and by function follow this section.

Table 6.--Differences Between OMB and CBO G-R-H Baselines
(in billions of dollars)

	Outlays	Receipts	Deficit
OMB Baseline.....	1,119.0	973.5	145.5
Differences:			
Economic:			
Interest Rates.....	6.2	0.7	5.5
Other (including debt service).....	2.8	3.3	-0.5
Subtotal, economic.....	9.0	4.0	5.0
Technical:			
National defense.....	4.7	---	4.7
Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance Corporation.....	3.1	---	3.1
Other.....	-3.6	2.3	-5.8
Subtotal, technical.....	4.2	2.3	2.0
Accounting:			
Nuclear Regulatory Commission fees and customs receipts.....	-0.3	-0.3	---
Required adjustments in the OMB baseline:			
Aggregate spendout rate requirement....	-1.1	---	-1.1
Medicare one percent rule.....	0.3	---	0.3
Subtotal, required adjustments in the OMB baseline.....	-0.8	---	-0.8
Legislation enacted and final regulations promulgated after CBO estimates were completed:			
Farm price support regulations.....	0.1	---	0.1
Family Support Act of 1988.....	*	-0.1	0.1
Subtotal, policy changes after CBO estimates completed.....	0.1	-0.1	0.2
Total differences.....	12.3	5.9	6.4
CBO Baseline.....	1131.3	979.4	151.8

* \$50 million or less.

TABLE 7.--G-R-H Baseline Spending Estimates for 1989 by Function
(in billions of dollars)

<u>Function</u>	<u>Budget Authority</u>	<u>Outlays</u>
National defense.....	299.1	293.4
International affairs.....	16.4	15.7
General science, space, and technology.....	12.8	12.3
Energy.....	5.6	4.9
Natural resources and environment.....	16.7	16.6
Agriculture.....	22.9	20.9
Commerce and housing credit.	15.8	11.6
Transportation.....	28.9	28.1
Community and regional development.....	6.8	6.6
Education, training, employ- ment, and social services..	36.3	35.9
Health.....	50.4	49.5
Medicare.....	106.2	86.3
Income security.....	176.7	135.9
Social security.....	283.6	232.6
Veterans benefits and services.....	29.3	29.0
Administration of justice...	9.0	8.8
General government.....	9.8	9.4
Net Interest.....	157.6	157.6
Allowances.....	---	1.1
Undistributed offsetting receipts.....	-37.1	-37.1
Total.....	1,246.8	1,119.0

Table 8.--G-R-H Baseline Spending Estimates for 1989 by Agency
(in billions of dollars)

Department or Other Unit	Budget Authority	Outlays
Legislative Branch.....	2.0	2.0
The Judiciary.....	1.4	1.4
Executive Office of the President.....	0.1	0.1
Funds Appropriated to the President.....	10.4	11.0
Agriculture.....	57.0	52.6
Commerce.....	2.7	2.7
Defense-Military.....	290.4	284.9
Defense-Civil.....	38.4	23.6
Education.....	21.8	20.6
Energy.....	11.7	11.3
Health and Human Services, except Social Security.....	194.2	173.6
Health and Human Services, Social Security.....	278.1	227.0
Housing and Urban Development.....	14.8	20.5
Interior.....	5.4	5.4
Justice.....	5.7	5.6
Labor.....	31.6	22.5
State.....	3.9	3.4
Transportation.....	28.0	27.2
Treasury.....	218.7	218.4
Environmental Protection Agency.....	5.1	5.1
General Services Administration.....	0.1	—*
National Aeronautics and Space Administration.....	10.8	10.4
Office of Personnel Management.....	50.9	30.9
Small Business Administration.....	0.4	0.4
Veterans Administration.....	29.2	28.9
Other independent agencies..	21.7	16.0
Allowances.....	---	1.1
Undistributed offsetting receipts.....	-87.6	-87.6
Total.....	1,246.8	1,119.0

* \$50 million or less.

Reader Aids

Federal Register

Vol. 53, No. 200

Monday, October 17, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....	39585
----------	-------

3 CFR

Proclamations:

5867.....	38687
5868.....	38689
5869.....	38691
5870.....	38693
5871.....	38695
5872.....	38697
5873.....	38699
5874.....	38705
5875.....	39071
5876.....	39073
5877.....	39075
5878.....	39077
5879.....	39888
5880.....	40201
5881.....	40395

Executive Orders:

11183 (Amended by EO 12653).....	38703
12653.....	38703
12654.....	38890

Administrative Orders:

Memorandums:	
Sept. 29, 1988.....	38701

Orders:

October 15, 1988.....	40696
-----------------------	-------

Presidential Determinations:

No. 88-24 of Sept. 13, 1988.....	39583
No. 88-25 of Sept. 29, 1988.....	40013

5 CFR

890.....	40203
1201.....	40015

Proposed Rules:

300.....	40546
430.....	38954
432.....	38954
870.....	40232

7 CFR

271.....	39433
272.....	39433
273.....	39433
275.....	39433
277.....	39433
401.....	38707
729.....	40203
906.....	40397
910.....	38707, 39444, 40205
987.....	39225
1126.....	39444
1137.....	39446
1475.....	40206

1478.....	40015
1610.....	39014
1736.....	39226
1951.....	39014, 39739
1980.....	40399

Proposed Rules:

29.....	40069
966.....	39305
984.....	39306
1001.....	38963
1002.....	38727, 38963
1004.....	38963
1007.....	38730
1098.....	38730
1099.....	39839
1124.....	39581
1125.....	39581
1772.....	38965
1930.....	40430
1944.....	40430

9 CFR

71.....	40378
78.....	40378, 40403
85.....	40378
91.....	40406
94.....	39447
309.....	40378
310.....	40378
320.....	40378

Proposed Rules:

318.....	39307
319.....	39307
381.....	39307

10 CFR

2.....	40019
600.....	38939
1035.....	38939

Proposed Rules:

15.....	39480
35.....	39745
50.....	40432
140.....	40233
430.....	39403

11 CFR

Proposed Rules:

106.....	40070
109.....	40070
114.....	40070

12 CFR

611.....	39079
614.....	32609
615.....	39229, 40033
618.....	39229
620.....	39609
621.....	39609
624.....	40049

Proposed Rules:

330.....	39746
----------	-------

FEDERAL REGISTER PAGES AND DATES, OCTOBER

38687-38938.....	3
38939-39072.....	4
39073-39224.....	5
39225-39432.....	6
39433-39582.....	7
39583-39738.....	11
39739-40012.....	12
40013-40200.....	13
40201-40394.....	14
40395-40714.....	17

509.....	40432	304.....	38942	234.....	40220	2622.....	39258
512.....	40432	305.....	39741	235.....	40220	2676.....	40224
522.....	40449	Proposed Rules:		240.....	40220	Proposed Rules:	
541.....	40449	419.....	39103	251.....	40220	1910.....	38738, 39581
542.....	40449	17 CFR		252.....	40220	1915.....	38738, 39581
543.....	40449	240.....	38967	255.....	40220	1917.....	38738, 39581
544.....	40449	Proposed Rules:		511.....	40220	1918.....	38738, 39581
545.....	40449	15.....	39103	570.....	40220	1926.....	38738, 39581
547.....	40449	18 CFR		813.....	40220	2560.....	40674
548.....	40449	1300.....	40217	882.....	40220	2570.....	40677
549.....	40449	1301.....	40217	887.....	40220	2610.....	39200, 39613, 39718
569a.....	40449	1307.....	39081	888.....	40220	30 CFR	
569b.....	40449	Proposed Rules		904.....	40220	206.....	39459
569c.....	40449	154.....	40235	905.....	40220	773.....	38868
615.....	39099	157.....	40235	913.....	40220	916.....	39085, 39467
13 CFR		260.....	40235	960.....	40220	917.....	39253, 39470
105.....	38941	284.....	40235	964.....	40220	934.....	39261
Proposed Rules:		385.....	40235	966.....	40220	Proposed Rules:	
108.....	38737	388.....	40235	970.....	40220	256.....	38739
14 CFR		19 CFR		Proposed Rules:		281.....	38739
13.....	39404	19.....	40218	200.....	40624	282.....	38739
21.....	39448	112.....	40218	201.....	39613, 40624	906.....	39105
23.....	39448	146.....	40218	203.....	38844, 40624	938.....	39316, 39489
39.....	39250,	Proposed Rules:		205.....	40624	31 CFR	
39449, 39450, 39839, 40051		211.....	40453	207.....	40624	103.....	40062
61.....	40318	20 CFR		213.....	38844, 40624	321.....	39581
71.....	39252-39254,	205.....	39255	215.....	40624	330.....	39404
39451, 40052-40054, 40318,		404.....	39014	220.....	38844	32 CFR	
40408, 40409		416.....	39014	221.....	38844, 40624	199.....	38947
73.....	39254, 40410	614.....	40550	222.....	38844	276.....	39262
91.....	40318	Proposed Rules:		226.....	38844	277.....	39262
97.....	39452	Ch. V.....	39403	232.....	40624	1285.....	38716
99.....	39842	235.....	39315	233.....	38844	33 CFR	
121.....	40316	404.....	39487	234.....	38844, 40624	100.....	38716, 39273, 39274
135.....	40316	416.....	39487	235.....	38844, 40624	117.....	38717
Proposed Rules:		21 CFR		236.....	40624	165.....	38718, 39604, 40414
Ch. I.....	39611, 40449	5.....	40055	241.....	40624	34 CFR	
39.....	40071, 40072, 40450	173.....	39455	242.....	40624	219.....	39018
71.....	39312-39314, 40073	177.....	39083	244.....	40624	222.....	39018
73.....	40452	436.....	39839	247.....	40624	500.....	39218
75.....	40452	446.....	39839	250.....	40624	501.....	39218
99.....	39846	510.....	39256, 39839, 40055-40057	251.....	40624	524.....	39218
119.....	39852	520.....	40055, 40058	255.....	40624	525.....	39218
121.....	39852	522.....	39839, 40056, 40057	290.....	40624	526.....	39218
125.....	39852	524.....	39084, 39256, 39839	390.....	40458	548.....	39218
127.....	39852	540.....	40058	501.....	40624	561.....	39218
135.....	39852	556.....	40059	510.....	40624	562.....	39218
157.....	39062	558.....	38708, 39257, 40059	570.....	40624	573.....	39218
15 CFR		573.....	40060	590.....	40624	574.....	39218
379.....	38835	886.....	38946	750.....	40624	581.....	39218
399.....	38835	1308.....	40061	813.....	40624	Proposed Rules:	
785.....	40410	Proposed Rules:		880.....	40624	263.....	39876
799.....	40410	1308.....	40390	881.....	40624	668.....	39317
801.....	39452	22 CFR		882.....	40624	682.....	39317
Proposed Rules:		7.....	39588	883.....	40624	785.....	39406
303.....	39486, 39612	20.....	39456	884.....	40624	786.....	39406
768.....	40074	204.....	39015	885.....	40624	787.....	39406
770.....	40074	1507.....	40411	886.....	40624	36 CFR	
771.....	40074	24 CFR		900.....	40624	1150.....	39473
772.....	40074	200.....	40220	904.....	40624	Proposed Rules:	
773.....	40074	203.....	40220	905.....	40256, 40624	1270.....	39747
774.....	40074	204.....	40220	906.....	40246	37 CFR	
775.....	40074	213.....	40220	913.....	40624	Proposed Rules:	
776.....	40074	220.....	40220	960.....	40624	1.....	39420
777.....	40074	221.....	40220	26 CFR		10.....	38740, 38948
778.....	40074	222.....	40220	1.....	38708, 39015, 39589	100.....	39734
779.....	40074	232.....	40220	602.....	38708, 39015, 39589	501.....	39734
785.....	40074	28 CFR		29 CFR			
786.....	40074	541.....	40686	2610.....	39258, 40222		
790.....	40074	550.....	40687	2619.....	40222		
799.....	40074						
16 CFR							
13.....	38941						

38 CFR**Proposed Rules:**

3.....	40544
8.....	39750
21.....	39490

39 CFR

232.....	39087
----------	-------

Proposed Rules:

111.....	40097
----------	-------

40 CFR

51.....	40656
52.....	38719, 38722, 39087, 39742, 40415, 40656
60.....	38892, 39412
81.....	38724
122.....	40562
147.....	39088
180.....	39090
264.....	39720
272.....	38950
372.....	39472
403.....	40562
799.....	38952

Proposed Rules:

52.....	40460
61.....	39058
145.....	38741
180.....	39106-39109
256.....	40243
261.....	40316
311.....	40692
763.....	38868
799.....	40244

41 CFR

105-54.....	40224
201-1.....	40066
201-30.....	40066
201-32.....	40066

42 CFR

405.....	38835
412.....	38835
413.....	38835
424.....	40231
489.....	38835

43 CFR

3450.....	39015
3590.....	39459

Public Land Orders:

6687.....	39274
-----------	-------

Proposed Rules:

2810.....	39403
5450.....	39491
9230.....	39403

44 CFR

62.....	39091
64.....	40426

Proposed Rules:

67.....	38741, 40098
---------	--------------

45 CFR**Proposed Rules:**

302.....	39110
303.....	39110
304.....	39110
305.....	39110

46 CFR**Proposed Rules:**

580.....	38742, 38969
----------	--------------

586.....	39317
----------	-------

47 CFR

0.....	39092
36.....	39095
73.....	39095, 39605
94.....	38725
300.....	39095

Proposed Rules:

73.....	38743, 38747, 39614-39617
90.....	39114

48 CFR

519.....	39096
----------	-------

Proposed Rules:

222.....	38749
247.....	38753
252.....	38753

49 CFR

383.....	39044
390.....	39044
391.....	39044
392.....	39044
531.....	39275
1185.....	39096, 40068
1207.....	40428
1249.....	40428

Proposed Rules:

177.....	39114
531.....	39115
571.....	39751, 40462, 40463
1207.....	39119
1249.....	39119

50 CFR

216.....	39743
601.....	39303
611.....	39475
625.....	39475
640.....	39581
642.....	39097, 40231
663.....	39606
675.....	38725, 39097, 39479, 39718, 39744

Proposed Rules:

17.....	38969, 39617-39626, 40479
23.....	38755
216.....	40246
651.....	39627

LIST OF PUBLIC LAWS**Last List October 14, 1988**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3977/Pub. L. 100-483

Mining and Mineral Resources Research Institute

Amendments of 1988. (Oct. 12, 1988; 102 Stat. 2339; 3 pages) Price: \$1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office. 115 New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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Title	Price	Revision Date
1, 2 (2 Reserved)	\$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	¹ Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	² Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	9.50	Jan. 1, 1988

Title	Price	Revision Date
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1988
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
18 Parts:		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
19 Parts:		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
21 Parts:		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1.160	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	³ Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988*
28	25.00	July 1, 1988

Title	Price	Revision Date	Title	Price	Revision Date
29 Parts:			42 Parts:		
0-99.....	17.00	July 1, 1988	1-60.....	15.00	Oct. 1, 1987
100-499.....	6.50	July 1, 1988	61-399.....	5.50	Oct. 1, 1987
500-899.....	24.00	July 1, 1987	400-429.....	21.00	Oct. 1, 1987
900-1899.....	11.00	July 1, 1988	430-End.....	14.00	Oct. 1, 1987
1900-1910.....	28.00	July 1, 1987	43 Parts:		
1911-1925.....	8.50	July 1, 1988	1-999.....	15.00	Oct. 1, 1987
1926.....	10.00	July 1, 1987	1000-3999.....	24.00	Oct. 1, 1987
1927-End.....	23.00	July 1, 1987	4000-End.....	11.00	Oct. 1, 1987
30 Parts:			44.....	18.00	Oct. 1, 1987
0-199.....	20.00	July 1, 1988	45 Parts:		
200-699.....	8.50	July 1, 1987	1-199.....	14.00	Oct. 1, 1987
*700-End.....	18.00	July 1, 1988	200-499.....	9.00	Oct. 1, 1987
31 Parts:			500-1199.....	18.00	Oct. 1, 1987
0-199.....	12.00	July 1, 1987	1200-End.....	14.00	Oct. 1, 1987
200-End.....	16.00	July 1, 1987	46 Parts:		
32 Parts:			1-40.....	13.00	Oct. 1, 1987
1-39, Vol. I.....	15.00	⁴ July 1, 1984	41-69.....	13.00	Oct. 1, 1987
1-39, Vol. II.....	19.00	⁴ July 1, 1984	70-89.....	7.00	Oct. 1, 1987
1-39, Vol. III.....	18.00	⁴ July 1, 1984	90-139.....	12.00	Oct. 1, 1987
1-189.....	20.00	July 1, 1987	140-155.....	12.00	Oct. 1, 1987
190-399.....	23.00	July 1, 1987	156-165.....	14.00	Oct. 1, 1987
400-629.....	21.00	July 1, 1987	166-199.....	13.00	Oct. 1, 1987
630-699.....	13.00	⁵ July 1, 1986	200-499.....	19.00	Oct. 1, 1987
700-799.....	15.00	July 1, 1988	500-End.....	10.00	Oct. 1, 1987
800-End.....	16.00	July 1, 1987	47 Parts:		
33 Parts:			0-19.....	17.00	Oct. 1, 1987
1-199.....	27.00	July 1, 1987	20-39.....	21.00	Oct. 1, 1987
200-End.....	19.00	July 1, 1987	40-69.....	10.00	Oct. 1, 1987
34 Parts:			70-79.....	17.00	Oct. 1, 1987
1-299.....	20.00	July 1, 1987	80-End.....	20.00	Oct. 1, 1987
300-399.....	11.00	July 1, 1987	48 Chapters:		
400-End.....	23.00	July 1, 1987	1 (Parts 1-51).....	26.00	Oct. 1, 1987
*35.....	9.50	July 1, 1988	1 (Parts 52-99).....	16.00	Oct. 1, 1987
36 Parts:			2 (Parts 201-251).....	17.00	Oct. 1, 1987
1-199.....	12.00	July 1, 1988	2 (Parts 252-299).....	15.00	Oct. 1, 1987
200-End.....	20.00	July 1, 1988	3-6.....	17.00	Oct. 1, 1987
37.....	13.00	July 1, 1988	7-14.....	24.00	Oct. 1, 1987
38 Parts:			15-End.....	23.00	Oct. 1, 1987
0-17.....	21.00	July 1, 1987	49 Parts:		
*18-End.....	19.00	July 1, 1988	1-99.....	10.00	Oct. 1, 1987
39.....	13.00	July 1, 1988	100-177.....	25.00	Oct. 1, 1987
40 Parts:			178-199.....	19.00	Oct. 1, 1987
1-51.....	21.00	July 1, 1987	200-399.....	17.00	Oct. 1, 1987
52.....	26.00	July 1, 1987	400-999.....	22.00	Oct. 1, 1987
53-60.....	24.00	July 1, 1987	1000-1199.....	17.00	Oct. 1, 1987
61-80.....	12.00	July 1, 1988	1200-End.....	18.00	Oct. 1, 1987
81-99.....	25.00	July 1, 1987	50 Parts:		
100-149.....	23.00	July 1, 1987	1-199.....	16.00	Oct. 1, 1987
150-189.....	18.00	July 1, 1987	200-599.....	12.00	Oct. 1, 1987
190-399.....	29.00	July 1, 1987	600-End.....	14.00	Oct. 1, 1987
400-424.....	22.00	July 1, 1987	CFR Index and Findings Aids.....	28.00	Jan. 1, 1988
425-699.....	21.00	July 1, 1987	Complete 1988 CFR set.....	595.00	1988
700-End.....	27.00	July 1, 1987	Microfiche CFR Edition:		
41 Chapters:			Complete set (one-time mailing).....	125.00	1984
1, 1-1 to 1-10.....	13.00	⁶ July 1, 1984	Complete set (one-time mailing).....	115.00	1985
1, 1-11 to Appendix, 2 (2 Reserved).....	13.00	⁶ July 1, 1984	Subscription (mailed as issued).....	185.00	1987
3-6.....	14.00	⁶ July 1, 1984	Subscription (mailed as issued).....	185.00	1988
7.....	6.00	⁶ July 1, 1984	Individual copies.....	3.75	1988
8.....	4.50	⁶ July 1, 1984	¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.		
9.....	13.00	⁶ July 1, 1984	² No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.		
10-17.....	9.50	⁶ July 1, 1984	³ No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.		
18, Vol. I, Parts 1-5.....	13.00	⁶ July 1, 1984	⁴ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.		
18, Vol. II, Parts 6-19.....	13.00	⁶ July 1, 1984	⁵ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.		
18, Vol. III, Parts 20-52.....	13.00	⁶ July 1, 1984	⁶ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.		
19-100.....	13.00	⁶ July 1, 1984			
1-100.....	10.00	July 1, 1988			
101.....	23.00	July 1, 1987			
102-200.....	12.00	July 1, 1988			
201-End.....	8.50	July 1, 1987			

Parameter	Group	Mean	SD	F	p
Heart rate (b/min)	Control	72.5	10.5	1.2	0.30
	Low dose	71.0	11.0		
	High dose	73.0	12.0		
	Low dose + exercise	74.0	13.0		
	High dose + exercise	75.0	14.0		
	Control + exercise	76.0	15.0		
	Low dose + exercise	77.0	16.0		
	High dose + exercise	78.0	17.0		
	Control + exercise	79.0	18.0		
	Low dose + exercise	80.0	19.0		
Blood pressure (mmHg)	Control	120.0	10.0	2.5	0.05
	Low dose	118.0	11.0		
	High dose	122.0	12.0		
	Low dose + exercise	124.0	13.0		
	High dose + exercise	126.0	14.0		
	Control + exercise	128.0	15.0		
	Low dose + exercise	130.0	16.0		
	High dose + exercise	132.0	17.0		
	Control + exercise	134.0	18.0		
	Low dose + exercise	136.0	19.0		
Stroke volume (ml)	Control	70.0	10.0	1.5	0.20
	Low dose	68.0	11.0		
	High dose	72.0	12.0		
	Low dose + exercise	74.0	13.0		
	High dose + exercise	76.0	14.0		
	Control + exercise	78.0	15.0		
	Low dose + exercise	80.0	16.0		
	High dose + exercise	82.0	17.0		
	Control + exercise	84.0	18.0		
	Low dose + exercise	86.0	19.0		
Cardiac output (l/min)	Control	5.0	0.5	3.0	0.01
	Low dose	4.8	0.6		
	High dose	5.2	0.7		
	Low dose + exercise	5.4	0.8		
	High dose + exercise	5.6	0.9		
	Control + exercise	5.8	1.0		
	Low dose + exercise	6.0	1.1		
	High dose + exercise	6.2	1.2		
	Control + exercise	6.4	1.3		
	Low dose + exercise	6.6	1.4		
Total peripheral resistance (mmHg/l/min)	Control	20.0	2.0	4.0	0.001
	Low dose	19.0	2.1		
	High dose	21.0	2.2		
	Low dose + exercise	22.0	2.3		
	High dose + exercise	23.0	2.4		
	Control + exercise	24.0	2.5		
	Low dose + exercise	25.0	2.6		
	High dose + exercise	26.0	2.7		
	Control + exercise	27.0	2.8		
	Low dose + exercise	28.0	2.9		